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No. 00-461

Supreme Court, U.S.
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In The

Supreme Court of the United States

RONNIE B. GREER,

Petitioner,

v.

DEBRA H. AMESQUA, ALAN SEEGER, MARGARET MacMURRAY, BYRON BISHOP, LYNN HOBBIE, MARIO MENDOZA, THE CITY OF MADISON FIRE DEPARTMENT, THE CITY OF MADISON, THE CITY OF MADISON POLICE & FIRE COMMISSION, and WISCONSIN MUNICIPAL MUTUAL INSURANCE COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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OPINIONS BELOW

Petitioner Ronnie Greer ("Greer") commenced the present action under 42 U.S.C. § 1983 against the City of Madison, Wisconsin, its Fire Chief Debra Amesqua, the City of Madison Board of Police and Fire Commissioners ("Commission"), the individual members of the Commission, the City of Madison Fire Department and the City of Madison's insurer, Wisconsin Municipal Mutual Insurance Company (hereinafter, collectively, the "City Defendants"). Greer alleged violation of his First Amendment speech rights and his right to due process of law and equal protection under the Fourteenth Amendment to the United States Constitution. The City Defendants denied Greer's claims and asserted a number of defenses. Greer's claims arose out of a decision by the Commission, issued on July 31, 1998, terminating Greer's employment for violation of City of Madison policies prohibiting harassment in the workplace and for violation of various City of Madison Fire Department rules and regulations. This disciplinary action was the fifth (5th) time in a ten (10) year period that Greer had appeared before the Commission on charges initiated by various City of Madison Fire Chiefs and the fifth (5th) time that the Commission found the charges to be meritorious, resulting in discipline of Greer. Greer did not appeal the Commission's discharge decision as he was permitted to do under state law. Instead, Greer filed a federal civil rights action challenging the Commission's decision.

Greer moved the district court for a preliminary injunction which the court denied based upon a finding that Greer lacked a probability of success on the merits. Greer did not appeal the denial of his motion for a preliminary injunction. The parties then filed cross-

motions for summary judgment on all claims. The district court, in its June 21, 1999 Opinion and Order, denied Greer's motion for summary judgment and granted the City Defendants' motion for summary judgment, concluding that the Defendants had violated none of Greer's federal constitutional rights. The trial court dismissed Greer's First Amendment speech claim, finding that the City's interests in efficiently operating its Fire Department outweighed Greer's interest as a firefighter in issuing the "news release." The court ruled that Greer had received all the process to which he was constitutionally due and, therefore, had no Fourteenth Amendment due process claim against the City Defendants. Finally, the trial court concluded that Greer's equal protection claim must be dismissed because Greer had not been treated differently than similarly situated firefighters, based upon either gender or sexual orientation. Greer appealed all issues decided adversely to him by the district court.

The United States Court of Appeals for the Seventh Circuit, in a unanimous decision, affirmed the district court's decision in all respects. The court of appeals, in ruling on Greer's due process claim, concluded that his predetermination hearing was constitutionally adequate under the procedural due process component of the Fourteenth Amendment. The court of appeals concluded that Greer had been provided an impartial decision-maker consistent with Fourteenth Amendment due process standards. The court of appeals also rejected Greer's due process argument that the departmental rules were so vague as to not provide adequate notice of the proscribed conduct.

The court of appeals also rejected Greer's equal protection challenge to his termination. The court of appeals

observed that "where an employee has an 'undisputed record of gross insubordination' as Greer does, the employee must show that another grossly insubordinate worker was treated better than him to defeat the presumption that his comparatively harsher punishment was attributable to his poor disciplinary history." (Petitioner's Appendix at p. 19a.) The court of appeals concluded that Greer had failed to show that he was similarly situated to members of the unprotected class allegedly treated better than Greer.

Finally, the court of appeals rejected Greer's First Amendment retaliatory speech claim. The court of appeals, relying on the balancing test enunciated by this Court, in *Pickering v. Board of Education of Township High School District*, 391 U.S. 563 (1968), concluded that the City of Madison Fire Department's interest in disciplining Greer outweighed Greer's interest in issuing the subject "news release."

Greer petitioned the United States Court of Appeals for the Seventh Circuit for a panel rehearing and rehearing *en banc*. The United States Court of Appeals for the Seventh Circuit denied Greer's petition.

Greer has petitioned the United States Supreme Court for a writ of certiorari, challenging only the court of appeals' ruling on the First Amendment issue. Greer does not challenge the decision dismissing Greer's Fourteenth Amendment due process and equal protection claims.

RESPONSE TO CRITERIA FOR CERTIORARI REVIEW

The rules of the United States Supreme Court set forth those limited circumstances under which the Supreme Court will use its limited resources and grant a petition for a writ of certiorari. Greer's Petition for a Writ of Certiorari meets none of the criteria set forth in Supreme Court Rule 10. The Supreme Court may grant certiorari review where the subject court of appeals' decision conflicts with the decision of another court of appeals on an important federal matter. Greer claims that the district court and court of appeals did not consider the truth of his statements in applying the *Pickering* balancing test and that this failure creates a conflict between Seventh Circuit decisions and other federal circuits. The Supreme Court should reject this argument for several reasons.

First, the Commission, in considering Greer's news release, specifically stated that it was treating Greer's statements regarding the Holtz/Cato dispute as true. The Commission, although noting that, in content, Greer's statements were "shallow; uninformed and uninformative," concluded that it would "not condition [Greer's] constitutional rights on our judgment of his accuracy." (Petitioner's Appendix at p. 44a.) Accordingly, the Commission assumed Greer's statements in his "news release" to be true. There is nothing in the district court or the court of appeals' decision to the contrary. Greer's argument, therefore, that courts must consider the truth of a statement in applying the *Pickering* balancing test is a non-issue since the Commission and the lower courts assumed Greer's statements to be true.

Additionally, this case does not present any conflict within the federal circuits. Greer cites several Seventh Circuit court of appeals' decisions, including *Wright v. Illinois Department of Children & Family Services*, 40 F.3d 1492 (7th Cir. 1994), and *Feldman v. Bahn*, 12 F.3d 730 (7th Cir. 1993), for the proposition that a court must consider the truth of the subject statements in applying the *Pickering* balancing test. Under Greer's analysis, these cases are consistent with cases from other circuits. At most, Greer is complaining that the court of appeals' decision in the instant case is in conflict with other Seventh Circuit decisions. The appropriate redress under these circumstances is to seek a rehearing *en banc* with the applicable court of appeals. Greer sought such review and the United States Court of Appeals for the Seventh Circuit denied his petition for *en banc* review.

There simply is no basis for the Supreme Court to conclude that the Seventh Circuit's decision in the case at bar is in conflict with other courts of appeals' decisions on the question of whether to consider the truth of a statement in application of the *Pickering* balancing test.

The only other Supreme Court criterion for review which Greer attempts to fit this case within is that the court of appeals "decided an important question of federal law that has not been, but should be, settled by this Court." (Sup. Ct. R. 10.) Greer attempts to fit his petition within this criterion by claiming that the lower courts erred, in applying the *Pickering* balancing test, when they relied on evidence not before the Commission. This argument is also fatally flawed. The district court explicitly stated that it was not relying on evidence not before the Commission: "I find that even if, as plaintiff insists, I exclude evidence not before the commission at the time of

its decision and accept the commission's decision that plaintiff's speech addressed matters of public concern, his speech is still not entitled to First Amendment protection under the *Pickering* balancing test." (Petitioner's Appendix at p. 42a.) Accordingly, the issue which Greer would like this Court to consider is simply not presented in this case.

However, even if the issue were properly presented by the facts, the Supreme Court should not use its limited resources to review this issue. A determination of whether there is just cause to discharge an employee under state law and the determination of whether an individual's First Amendment rights are violated by the discharge from employment are two (2) entirely different inquiries. One would certainly not anticipate that all facts relevant to the *Pickering* balancing test would be presented in the context of an administrative hearing involving just cause to discharge an employee. Relatedly, one would not anticipate that an employer, in a subsequent federal court proceeding, would be precluded from presenting evidence relating to the factors considered in the *Pickering* balancing test simply because this evidence was not presented in the administrative hearing involving the just cause determination.

Because Greer satisfies none of the criterion for certiorari review set forth in Supreme Court Rule 10, this Court should deny Greer's Petition for a Writ of Certiorari.

STATEMENT OF THE CASE

This case arose out of the Commission's July 31, 1998, decision to terminate Greer's employment as a City of Madison, Wisconsin firefighter for violation of the City's policies prohibiting harassment in the workplace and for violation of several fire department rules and regulations. Greer was openly anti-homosexual and challenged the Fire Chief from the date she was hired as chief because of his belief that she was a lesbian. The Commission suspended Greer for his anti-homosexual activities which violated the City's written policies prohibiting harassment in the workplace on the basis of a person's sexual orientation. The Commission subsequently terminated Greer's employment in a separate disciplinary proceeding for his improper conduct in issuing a "news release" entitled *News Release – Homosexual Chief Rewards Homosexual Chief for Assault?*

Rather than appeal his discharge from employment as permitted under state law, Greer filed a federal civil rights action alleging that the Commission's decision was erroneous and in violation of Greer's constitutional rights. Greer claims that the Commission erred by not admitting into evidence several offers of proof which he made at the Commission hearing. The appropriate challenge to evidentiary determinations by the factfinder in a state administrative proceeding is through the appeal channels allowed by state statute, not through federal court review.

This case is a run-of-the-mill First Amendment public employee speech case which lower federal courts consider on almost a daily basis. Greer was an anti-homosexual crusader and personalized his crusade in challenging

his boss, the Chief of the City of Madison Fire Department. Greer made accusations about the Chief's sexual orientation and, with limited information about a disciplinary decision by the Chief, accused the Chief of favoritism based upon sexual orientation. The United States District Court for the Western District of Wisconsin and United States Court of Appeals for the Seventh Circuit applied the *Pickering* balancing test that this Court formulated in the *Pickering* decision and has developed in numerous public employee speech cases since *Pickering*. The lower courts appropriately applied the factors under the balancing test and properly concluded that the balance weighed in favor of the City defendants. There is absolutely nothing novel or significantly different in the lower courts' application of the *Pickering* test in this case from the numerous other federal court decisions which are adequately guided by this Court's First Amendment public employee speech jurisprudence. Supreme Court review would be a waste of this Court's limited resources.

STATEMENT OF FACTS

The Commission, by decision and order dated July 31, 1998, terminated the employment of Greer as discipline for engaging in conduct in violation of City of Madison and Fire Department policies and rules. (Petitioner's Appendix at pp. 94a-121a.) The discharge decision was based upon Greer's self-styled "news release" which he circulated to local media in April 1997. (*Id.*) Greer's discharge was based upon five (5) independent grounds. (*Id.*) First, Greer was discharged for violation of Fire Department Rule 51 which provides "officers and

members shall at all times conduct themselves so as to not bring the department in disrepute." (Rule 51, City of Madison Fire Department Work Rules.) (*Id.*) Second, Greer was discharged for violation of Fire Department Rule 18 which provides in relevant part:

> Members shall . . . treat their superiors with respect . . . Members . . . shall conform to the rules and regulations of the department, observe the laws and ordinances, and render their services to the City with zeal, courage, and discretion and fidelity.

(Rule 18, City of Madison Fire Department Work Rules.) (*Id.*) Third, Greer was discharged for violation of Fire Department Rule 39 which provides:

> Members must conform to and promptly and cheerfully obey all laws, ordinances, rules, regulations, and orders, whether general, special or verbal, when emanating from due authority. They shall be strictly on time to the minute, and obedience must be prompt, implicit, unqualified and unequivocal.

(Rule 39, City of Madison Fire Department Work Rules.) (*Id.*)

Fourth, Greer was discharged for violation of Fire Department Rule 65, which provides:

> Employees shall not harass co-employees because of their sexual orientation either by the use of derogatory verbal or written comments, graphic materials, gestures or conduct which would interfere with the performance of their duties. "Sexual orientation" means having a preference for heterosexuality, homosexuality,

> bisexuality, having a history of such a preference, or being identified with such a preference.

(Rule 65, City of Madison Fire Department Work Rules.) (*Id.*) Finally, Greer was discharged for violation of City of Madison Administrative Procedure Memorandum ("APM") 3-5, which prohibits harassment in the workplace on the basis of sexual orientation and other protected characteristics under state and federal law. (*Id.*)

Greer prepared and circulated his "news release" in April 1997. (Respondents' Appendix at p. 14.) Greer forwarded the "news release" to at least the *Capital Times* and *Wisconsin State Journal* and may have circulated the release to television and radio stations. (*Id.* at p. 15.) When Greer forwarded the "news release" to the media, he understood that the press could publish some or all of it. (*Id.*) Greer had no objection to the press publishing his "news release" and never told the press to not publish the release. (*Id.* at pp. 16-17.)

In the title of the "news release," the first reference to a "homosexual chief" referred to Chief Amesqua and the second reference referred to Division Chief Marcia Holtz. (*Id.* at p. 17.) Amesqua never informed Greer as to her sexual orientation. (*Id.*) Amesqua has never publicly acknowledged her sexual orientation. (*Id.* at pp. 17-18; Amesqua Affidavit, para. 30, Respondents' Appendix at p. 83.) Greer never asked Amesqua for permission to make the allegations in the "news release" and Amesqua never informed Greer that he had her consent to make the statements, including referring to her as "homosexual chief." (Respondents' Appendix at p. 18.) In fact, Greer had asked the Chief about her sexuality and Amesqua had informed him on at least two (2) occasions that her

sexual activity and orientation were not relevant to her performing her job. (*Id.* at p. 20.)

Greer believes that homosexuality is a perversion which relates to whether someone has a good character. (*Id.* at p. 21.) Greer believes if an individual is a homosexual, that reflects negatively on his or her character. (*Id.*) Greer has stated this view publicly on a number of occasions and has made this type of statement to firefighters prior to the time he sent out his "news release." (*Id.*)

Greer believes that Amesqua is a poor leader because of her character which in part, in his opinion, is because of her sexual orientation. (*Id.* at pp. 21-22.) Greer believes that Chief Amesqua's sexual orientation is a factor she will have to overcome and is a problem. (*Id.* at p. 26.) Greer also believes that Amesqua's sexual orientation is a character flaw that impedes her from effectively doing her job. (*Id.*)

Greer believes that homosexuality is sinful, destructive to individuals, and destructive to society that accepts it. (*Id.* at p. 27.) Greer has made public statements that he believes homosexuals should be discriminated against in employment. (*Id.* at pp. 27-28.) Greer has made statements that he believes homosexuals should not be permitted to hold positions of authority, including the position of Fire Chief. (*Id.* at p. 28.) Greer has also expressed views that he believes homosexuals molest children. (*Id.*) Greer has discussed the above views with other firefighters. (*Id.*)

In the "news release," Greer refers to Holtz as a homosexual. (*Id.* at p. 30.) Greer has never asked Holtz for consent to disclose her sexual orientation. (*Id.*) Holtz has never informed Greer that he has her consent to

disclose her sexual orientation. (*Id.*) Greer did not even recall if Holtz had informed Greer that Holtz allegedly is a lesbian. (*Id.* at p. 31.)

Greer's "news release" references an incident between Holtz and firefighter recruit Ron Cato. (*Id.*) In October 1996, Amesqua learned about an incident which occurred during a training exercise at the Firefighter Academy involving Recruit Cato and Holtz. (Amesqua Affidavit, at para. 10; Respondents' Appendix at p. 81.) This incident involved physical contact between Holtz and Cato. (*Id.* at para. 11, p. 81.) Amesqua assigned Assistant Chief Spohn to investigate this matter. (*Id.* at para. 12, p. 81.) Spohn conducted an investigation and provided a report and recommendations to Amesqua. (*Id.* at para. 13, p. 81.) Amesqua reviewed Spohn's report and the file in this matter and determined that Holtz could benefit from additional training. (*Id.* at paras. 14-15, p. 81.) Amesqua also extended Holtz' probation for six (6) months as a result of the incident. (*Id.* at para. 15, p. 81.)

Greer was not present when the incident between Cato and Holtz occurred. (Respondents' Appendix at p. 32.) Greer was not questioned about the incident and was not in any way a part of the investigation. (*Id.*) Greer did not have and had not seen any investigative findings before he prepared and circulated the subject "news release." (*Id.*) Spohn had not revealed to Greer who Spohn had spoken with as part of his investigation. (*Id.* at p. 33.) Spohn had not informed Greer of what conclusions Spohn came to in his investigation, why he came to any particular conclusions or what recommendations he was making to the Chief. (*Id.* at pp. 33-34.) None of the Assistant or Division Chiefs had advised Greer of any specific information regarding the Holtz/Cato matter

before Greer sent out his "news release." (*Id.* at pp. 34-35.) Greer did not discuss with Amesqua the findings of Spohn's investigation or what recommendations Spohn had made. (*Id.* at pp. 36-37.)

Prior to distributing the "news release," Greer had not seen the investigation report and had not been told the reasons for any recommendations by Spohn. (*Id.* at pp. 37-38.) Prior to the time Greer distributed his "news release," he had no knowledge as to Amesqua's reasons for her disciplinary decision. (*Id.* at p. 38.) In fact, Greer has never spoken with Amesqua about the reasons for her decision regarding discipline of Holtz. (*Id.*) Greer testified that he did not recall if he had even spoken with Cato before he sent out his "news release." (*Id.* at p. 42.) Greer had not spoken with Holtz before he sent out the "new release." (*Id.*)

Greer stated in his "news release":

> The investigation was done by another Division Chief who is a subordinate to Chief Amesqua and a staff member with Division Chief Holtz. *Is it possible that the investigating officer could have been unduly influenced?*

(Petitioner's Appendix at p. 180a.) Greer testified that he is not aware of any special relationship between Spohn and Holtz. (Respondents' Appendix at pp. 43-44.) Greer had no information that Spohn conducted the investigation in any way which was influenced by the fact that Holtz was a fellow staff member. (*Id.* at p. 44.) Prior to distributing the "news release," no one informed Greer

that Spohn had been improperly influenced in the recommendations which he made. (*Id.*) Greer is not aware of any conduct by Spohn during the course of the investigation which Greer thought was improper. (*Id.*) Greer is not aware of any individual who Greer believes Spohn should have but did not speak with as part of his investigation. (*Id.* at p. 45.)

In the "news release," Greer identifies himself as a firefighter with over seventeen (17) years of firefighting experience. (Petitioner's Appendix at p. 179a.) Greer stated in his "news release" that the Holtz/Cato matter was "downplayed" and "swept over." (*Id.*) Greer referenced the organization "Women in Fire" in his "news release" as an organization seen by most firefighters as a predominantly homosexual organization. (*Id.* at p. 180a.) Greer also viewed this organization as a predominantly lesbian organization. (Respondents' Appendix at pp. 48-49.) Greer's reference to the "clear agendas" and "radical agendas" in the "news release" related to Greer's belief that Amesqua and Holtz advocated for homosexuals. (*Id.* at p. 49.)

Greer suggests in the "news release" that favoritism based on Amesqua and Holtz allegedly being lesbians may have been a reason for Amesqua's discipline decision. (*Id.* at pp. 47-48.) The "news release" suggests that Amesqua "excused and glossed over" Holtz' conduct regarding the Cato matter based upon Holtz' sexual orientation. (Petitioner's Appendix at p. 180a.)

Greer, in reference to the Cato incident, stated in his "news release" that Cato was "mysteriously 'let go' literally days before graduating from the fire academy. Makes you go, 'Hmm'." (*Id.* at p. 181a.) Greer testified that he

still does not know why Cato was terminated from employment. (Respondents' Appendix at p. 53.)

Much of the second page of the Greer "news release" discusses personal disputes between Greer and Amesqua. (*Id.* at p. 179a-181a; Respondents' Appendix at pp. 50-53.) Specifically, several references in the first paragraph of page two (2) of the "news release" relate specifically to Greer's disputes with Amesqua, including the pending disputes which led to Greer's suspension in June 1997. (Respondents' Appendix at pp. 51-53.) At the time Greer distributed his "news release" to the media, the issue of his suspension was pending before the Commission. (*Id.* at p. 51.)

Greer understood that it would be a violation of the law if Amesqua made disciplinary decisions based upon a person's sexual orientation. (*Id.* at pp. 64-65.) Greer acknowledged that he suggested in his "news release" that Amesqua had violated state and federal law. (*Id.* at p. 65.) Greer acknowledged that this allegation in his "news release" would be embarrassing to Amesqua. (*Id.*) Greer sent the "news release" in part as Ron Greer, the firefighter. (*Id.* at p. 73.) Greer testified that if someone believed that Amesqua had acted illegally as suggested in the "news release," that could discredit the Chief. (*Id.* at p. 75.) Greer testified that if people believed that Amesqua was meting out discipline unfairly, that could affect their attitudes regarding whether Amesqua acted fairly, in disciplining others and could create difficulty with these people accepting the Chief's decisions. (*Id.* at p. 76.)

On or about May 1, 1997, Amesqua became aware of Greer's "news release" and a newspaper article which appeared in the *Capital Times* newspaper which was

based upon the "news release." (Amesqua Affidavit at para. 16, Respondents' Appendix at p. 81.) Greer acknowledges that the May 1 newspaper article is based upon his "news release." (*Id.* at pp. 80-81.) Amesqua assigned Assistant Chief Saxe to investigate Greer's conduct in providing the offensive "news release" to the press. (*Id.* at para. 17, p. 81.) Assistant Chief Saxe contacted Greer and advised him of the investigation. (Respondents' Appendix at p. 55.) Assistant Chief Saxe held a pre-determination hearing with Greer. (*Id.* at pp. 56-57.) Greer brought the union president with him to the pre-determination hearing. (*Id.* at p. 58.) Assistant Chief Saxe asked Greer if he had prepared the "news release" and Greer admitted that he had. (*Id.* at p. 56.) Saxe also inquired as to whether Greer had distributed the "news release" to the media and Greer admitted that he had. (*Id.*) Greer was permitted to make whatever statement he wished relating to the questions he was asked at the pre-determination hearing. (*Id.* at p. 60.) At the end of Assistant Chief Saxe's questions, Greer was given the opportunity to add whatever information he chose within the questions asked. (*Id.* at pp. 60-61.) Greer had no recollection of Assistant Chief Saxe preventing Greer from saying anything at the pre-determination hearing. (*Id.* at p. 62.)

Greer understood that part of Assistant Chief Saxe's investigation included talking to Greer, talking to a reporter and talking with other individuals. (*Id.* at p. 57.) Assistant Chief Saxe completed his investigation on or about June 5, 1997, and prepared a report and recommendation which he forwarded to Amesqua. (Amesqua Affidavit, para. 18, Respondents' Appendix at p. 82.) Assistant Chief Saxe recommended that the employment of Greer be terminated. (*Id.* at para. 19, p. 82.)

Amesqua reviewed Assistant Chief Saxe's June 5, 1997 report and the file in this matter. (*Id.* at para. 20, p. 82.) In correspondence dated June 10, 1997, from Amesqua to Greer, Amesqua informed Greer that based upon Greer's conduct regarding the content and distribution of the "news release" to the press, Amesqua had concluded that Greer's employment with the Department should be terminated. (*Id.* at para. 21, p. 82.) Amesqua provided to Greer the opportunity to resign, which Greer declined to do. (*Id.* at para. 22, p. 82.) Amesqua filed formal charges with the Commission, seeking Greer's dismissal on or about July 28, 1997. (*Id.* at para. 24, p. 82.)

The Commission issued its decision and order on or about July 31, 1998, sustaining all five (5) counts of the charges and immediately terminating Greer's employment as a firefighter. (Petitioner's Appendix at pp. 94a-121a.)

Greer received a copy of the Fire Department Work Rules when he was in the recruit academy. (Respondents' Appendix at p. 10.) Changes to the rules were posted on the bulletin board in the fire station where he worked. (*Id.* at p. 12.) Each fire station maintained a book with the Fire Department rules. (*Id.*) If Greer needed a copy of the work rules, they were available to him. (*Id.*) If Greer had questions as to what a work rule meant, one of the Division Chiefs was readily available to him. (*Id.*) When Greer had questions about what a work rule meant, he would ask. (*Id.* at pp. 10-11.) Greer understood the work rules which he had been charged with violating and knew these rules existed. (*Id.* at p. 63.) Greer was aware that disrespect of a superior was a work rule violation.

(*Id.*) Greer was aware of the work rule prohibiting bringing the Department into disrepute. (*Id.*) Greer also was aware of Fire Department rules prohibiting harassment at the Fire Department. (*Id.*) Greer was aware of the above rules in May-June of 1997. (*Id.* at pp. 63-64.)

Greer received the City's APM prohibiting harassment in the workplace. (*Id.* at pp. 2-3.) Greer received this memorandum before 1995 and read it. (*Id.* at p. 3.) Greer had been a discussion facilitator for firefighters on issues of harassment. (*Id.* at p. 2.) Greer received a copy of the City's APM prohibiting harassment in the workplace on an annual basis for a number of years. (*Id.* at p. 4.) When Greer had questions regarding the anti-harassment APM, he addressed these to various City officials, including the City's Affirmative Action Director. (*Id.* at p. 3.) The City's APM prohibits harassment on the basis of sexual orientation. (*Id.* at pp. 85-90.) Greer believed that he had received training on the City's anti-harassment memorandum. (*Id.* at pp. 5-6.) Greer understood that sexual orientation as used in the APM referred to homosexuality. (*Id.* at p. 7.) Greer agrees that it is a legitimate policy of the City to not permit harassment in the workplace. (*Id.*) Greer also agrees that it is important to firefighting that there not be harassment in the workplace. (*Id.* at p. 8.)

Amesqua received complaints from City of Madison residents, as well as firefighters, regarding Greer's verbal attacks on homosexuals. (Amesqua Affidavit at para. 25, Respondents' Appendix at p. 83.) Greer, himself, acknowledges that he has received negative comments about his views on homosexuality. (Respondents' Appendix at p. 74.) In bringing charges to the Commission recommending termination of Greer's employment as a

firefighter, Amesqua was seriously concerned with the disruptive effect of Greer's inappropriate comments on other employees, on management and on the public's confidence of the City of Madison to provide firefighting services to all citizens regardless of their sexual orientation. (Amesqua Affidavit at para. 26, Respondents' Appendix at p. 83.) Amesqua, in bringing charges seeking Greer's dismissal was concerned with Greer's inability to maintain a civil relationship with his supervisors. (*Id.* at para. 27, p. 83.) Discipline and employee comradery are essential for the safe and efficient operation of the Fire Department. (*Id.* at para. 28, p. 83.) Greer's comments as reflected in the "news release" had the serious potential to adversely affect the efficient operation of the City of Madison Fire Department. (*Id.*)

Greer was at the press conference where it was announced that Amesqua had been hired as the City's Fire Chief. (Respondents' Appendix at p. 23.) Greer talked to reporters that day and was critical of the decision to hire Amesqua. (*Id.* at pp. 24-26.) Greer also attended Amesqua's swearing in ceremony. (*Id.* at p. 76.) Greer stood in the back of the swearing in proceedings and held a sign objecting to the hiring decision. (*Id.*) Greer objected to the hiring of Amesqua based in part on what he believed to be her sexual orientation. (*Id.* at p. 77.) Greer was the sole vocal, visible dissenter at the swearing in ceremony. (*Id.*) Greer has testified that between the hiring of Amesqua in January 1996 and Greer's termination, Greer has been critical of Amesqua at least fifty (50) times. (*Id.* at p. 27.)

Since the hiring of Amesqua, Greer has had between six (6) and ten (10) contacts with her. (*Id.* at p. 70.) These contacts included attendance at staff meetings, as well as contacts at fire scenes. (*Id.*)

Firefighters are an extremely close group. (*Id.* at pp. 39-40.) It is critical that there be good working relationships between firefighters. (*Id.*) Greer acknowledges that firefighting presents life and death situations and firefighters need to be able to depend on one another. (*Id.* at p. 40.) Greer admits that an extremely serious problem would result if there are questions whether one firefighter can trust another. (*Id.*) Greer is distrustful of people he believes to be homosexuals. (*Id.* at p. 41.)

Firefighters must respond to emergencies. (*Id.* at p. 66.) In these emergencies, trust between firefighters who are often in life and death situations is critical. (*Id.*) Greer admits that trust in emergency firefighting situations is probably more significant than anywhere else. (*Id.*) Greer admits that firefighters must always work as a team when responding to emergencies. (*Id.*) At a fire scene, complying with authority is important. (*Id.* at p. 78.) Greer acknowledges that firefighters are expected to respect the chain of command at the Fire Department. (*Id.* at pp. 71-72.)

SUMMARY OF ARGUMENT

In this relatively routine First Amendment public employee speech case, the district court and court of appeals applied the well-established *Pickering* balancing test and concluded that the employer's interest in efficiently and effectively operating its fire department outweighed Greer's interest in making statements about the Chief's alleged sexual orientation and the specific disciplinary action taken by the Chief. Greer, displeased with the judicial decisions, has sought Supreme Court review. Apparently recognizing that the First Amendment employee speech question raises no novel federal issues, Greer attempts to couch the issues presented in his petition for a writ of certiorari in a manner which suggests that the case presents new and important federal issues.

First, Greer argues that the United States Supreme Court should grant review because this case raises the issue of the role of truth of the subject speech in the *Pickering* analysis. This issue is not presented in the instant case because the Commission expressly stated that it was not conditioning Greer's speech rights on the accuracy of his statements. Accordingly, the Commission presumed that Greer's statements about the Holtz/Cato incident were true. Furthermore, the lower courts applied the *Pickering* balancing test to Greer's "news release," treating Greer's speech as if it were true.

Second, Greer claims that the Commission erred in excluding certain evidence at the Commission hearing regarding the truthfulness of his statements. Again, this is not an issue since the Commission assumed that

Greer's statements in the "news release" were true. However, issues regarding evidentiary rulings at a state administrative hearing are more appropriately reviewed under applicable state law, not in a federal civil rights action. Wisconsin law permits appellate review of Commission decisions. Greer, having decided to forego state appellate review of the Commission's decision in this case, cannot obtain review in a federal court civil rights lawsuit.

Finally, Greer claims that the district court and court of appeals erred in considering, during its First Amendment analysis, evidence not before the Commission. This argument is meritless. The district court stated that it was not considering evidence outside the Commission record and the court of appeals affirmed the district court's decision. Accordingly, the issue regarding consideration of extra-Commission evidence is not presented in this petition. However, even if the issue were presented, it would have been appropriate for the district court to consider evidence which was not before the Commission in applying the *Pickering* balancing test. The Commission determined whether there was just cause to terminate Greer's employment. The First Amendment analysis presents a different inquiry. It would be error to foreclose presentation of evidence in a federal court proceeding on the *Pickering* factors simply because the evidence was not presented at an administrative hearing which considered an entirely different issue.

ARGUMENT AND AUTHORITIES

I. WHETHER COURTS MUST CONSIDER THE TRUTH OF A STATEMENT IN APPLYING THE PICKERING BALANCING TEST IS NOT PRESENTED IN THE CASE AT BAR BECAUSE THE LOWER COURTS CONSIDERED THE TRUTH OF GREER'S "NEWS RELEASE" AND GAVE GREER THE BENEFIT OF THE DOUBT REGARDING ITS VERACITY.

Greer argues that the Seventh Circuit erred by not considering the truth of his statements in applying the *Pickering* balancing test and ultimately concluding that the Defendant Fire Department was justified in terminating him. Greer is mistaken. The Seventh Circuit not only considered the truthfulness of the "news release," but gave Greer the benefit of any doubt regarding the truthfulness of Greer's statements.

Greer contends that the truth of his "news release" must be considered under the *Pickering* balancing test because the interests supporting protection are greater if his statements were true or reasonable. In the case at bar, the Seventh Circuit applied the *Pickering* balancing test to Greer's "news release," correctly recognizing that the *Pickering* balancing test applies only to speech that is true or reasonably believed to be true. The Seventh Circuit assumed that the statements in Greer's "news release" were true or that Greer reasonably believed the statements to be true.

The Seventh Circuit's assumption regarding the truthfulness of the "news release" is consistent with the treatment of the "news release" by the district court, the Commission and the Fire Department. The district court, like the Seventh Circuit, in applying the *Pickering* balancing test to the "news release," treated the "news release"

as if it were true. The Commission, in considering Greer's "news release," explicitly stated "we will not condition [Greer's] constitutional rights on our judgement of his accuracy." (Petitioner's Appendix at p. 44a.) Moreover, the Fire Department dropped its charges against Greer under Fire Department Rule 47, which requires employees to "speak the truth at all times" and Fire Department Rule 50, which prohibits "false reports."

Throughout this litigation Greer has argued that true speech deserves absolute protection. This position is not supported by the law of this Court or any federal circuit court. Moreover, as the lower courts correctly concluded, true speech is *not* absolutely protected. Where the lower courts, as they did in the case at bar, gave Greer's "news release" the benefit of any doubt regarding its veracity, there is no further consideration the lower courts could give to Greer's statements short of absolute protection.

Because the Seventh Circuit considered the truthfulness of Greer's statement in applying the *Pickering* balancing test, assuming such statement to be true, Greer's petition seeks certiorari review of a nonissue in the case at bar. The Supreme Court should not allocate its scarce resources to examine a well-settled issue which does not present in this case. Accordingly, Respondents respectfully request that the Supreme Court deny Greer's Petition for a Writ of Certiorari.

II. THE SEVENTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH DECISIONS OF OTHER CIRCUITS.

Greer argues that the Seventh Circuit's decision in this case conflicts with decisions of other circuit courts as

well as prior Seventh Circuit decisions because the Seventh Circuit allegedly did not consider the truthfulness of Greer's "news release." Greer's argument is fatally flawed. For the reasons set forth in Section I, *supra*, there can be no reasonable dispute that the Seventh Circuit not only considered the truthfulness of Greer's statements, but gave his statements the benefit of any doubt with respect to their veracity. As such, the issue which Greer claims is the subject of conflict among the circuits and, therefore, warranting certiorari review, i.e., whether courts must examine the truth of an employee's statement under the *Pickering* balancing test, does not present in this case.

Additionally, this case does not present any conflict within the federal circuits. Greer cites several Seventh Circuit decisions, including *Wright v. Illinois Department of Child & Family Services*, 40 F.3d 1492 (7th Cir. 1994), and *Feldman v. Bahn*, 12 F.3d 730 (7th Cir. 1993), which he contends stand for the proposition that a court must consider the truth of the subject statements in applying the *Pickering* balancing test. Greer has gone to great lengths in his Petition to establish the consistency between these Seventh Circuit decisions and decisions from other circuits which he claims stand for the same proposition. As such, Greer's own Petition confirms that there is no conflict between the circuits regarding whether courts should consider the truthfulness of the subject statements in applying the *Pickering* balancing test. At most, Greer is complaining that the Seventh Circuit's decision in the instant case is in conflict with other Seventh Circuit decisions. Under these circumstances, the appropriate redress is to seek a rehearing *en banc* with the governing circuit court. In the instant matter, Greer

sought a panel rehearing as well as a rehearing *en banc* with the Seventh Circuit and the Seventh Circuit court of appeals denied Greer's Petition.

Greer also attempts to force this case before the Supreme Court under its conflict criterion by claiming that there is a conflict between the Seventh Circuit and the Ninth Circuit regarding whether recklessly false statements are unprotected *per se*. Once again Greer is seeking certiorari review of a nonissue in the case at bar. The issue of whether recklessly false statements are unprotected *per se* does not present in this case because the Seventh Circuit not only applied the *Pickering* balancing test under the belief that Greer's statements were true or believed to be true, but specifically stated that, for the purpose of its review, the Seventh Circuit had "assumed that Greer's news release was *not* recklessly false." (Petitioner's Appendix at p. 26a (emphasis added)). Because the issue of whether recklessly false statements are unprotected *per se* is a nonissue in this case, Respondents respectfully request that the Supreme Court deny Greer's Petition for a Writ of Certiorari.

III. THE ISSUE OF WHETHER IT WAS PROPER FOR THE DISTRICT COURT TO CONSIDER EVIDENCE NOT BEFORE THE COMMISSION IS NOT PRESENTED BY THE CASE AT BAR.

Greer contends that the Supreme Court should grant certiorari review in this case to consider whether it is error for a district court, when implementing the *Pickering* balancing test, to consider evidence which was not before the employer at the time of the subject employment decision. This case does not present that issue

because the district court expressly stated that it was not considering such evidence when it struck the *Pickering* balance in favor of the City of Madison. Even if the question were presented, it would not merit Supreme Court review. Greer has not identified any division in the circuits on this issue. Additionally, considering evidence not in the possession of the employer at the time of the employment decision does not conflict with any United States Supreme Court authority. Finally, Greer's position on the merits of the issue is incorrect.

In support of their motion for summary judgment, the City defendants included deposition testimony of Greer taken in this litigation, as well as an affidavit of Chief Debra Amesqua. Greer argued, in his summary judgment responsive materials, that the district court, in analyzing Greer's First Amendment claim, should not consider any information which was not before the Commission. Defendants argue that the Commission decided whether there was just cause to discharge Greer, not necessarily whether the discharge violated Greer's First Amendment rights. Accordingly, it would be error for the district court to refuse to consider evidence which was not presented to the Commission, but which was relevant to application of one or more of the *Pickering* factors. The district court determined that it did not need to reach this issue because, based upon the information before the Commission, the *Pickering* balance tipped in favor of the City Defendants. Specifically, the district court stated:

> I find that even if, as plaintiff insists, I exclude evidence not before the commission at the time of its decision and accept the commission's decision that plaintiff's speech addressed matters of public concern, his speech is still not entitled to

First Amendment protection under the *Pickering* balancing test.

(Petitioner's Appendix at p. 42a.) The court of appeals affirmed the district court's decision.

The United States Supreme Court, in *Waters v. Churchill*, 511 U.S. 661 (1994), ruled that speech which is subject to the *Pickering* balancing test is that speech which the employer determined to have occurred following a reasonable investigation. Greer apparently is seeking Supreme Court review to request that the United States Supreme Court extend *Waters* to bar all evidence not considered by an employer, regardless of whether the employer even considered the First Amendment issue and the *Pickering* balancing test in the employer's employment decision. Although a potentially interesting question, this issue must await another day for decision. The issue is not presented in this case since the lower courts adopted Greer's position and applied the *Pickering* balancing test without considering Greer's deposition testimony and the Amesqua affidavit, other than for background facts.

Greer points to no split in the circuits on the above issue. Additionally, Greer does not contend that considering extra-Commission evidence conflicts with United States Supreme Court authority. Rather, Greer seeks certiorari review on this issue, apparently under the Supreme Court criterion that this is an important issue of federal constitutional law which has not been, but should be, settled by the Supreme Court. The Supreme Court should permit the federal circuit courts to develop the law in this area. There is no reason to believe that the *Waters* decision has not provided adequate guidance to the lower courts.

The fact that there have been no conflicts in the circuits regarding the scope of the *Waters* decision suggests that *Waters* has provided adequate guidance to the lower federal courts.

Greer's position on the scope of the *Waters* case is in error. Greer would have this Court rule that information which was not before the employer when it made its employment decision is inadmissible in a First Amendment case. Under Greer's theory, a determination by an employer that the employer's interest in efficiently operating its business outweighs an employee's interest in speaking out on a matter of public concern would foreclose federal court review of the First Amendment issue. Alternatively, even if an employer had not considered a *Pickering* factor, such as potential disruption of the subject speech on an employer's business, the employer, in a subsequent federal civil rights case, would be barred from presenting evidence on one of the *Pickering* factors. There can be a number of reasons why an employer would not consider such evidence at the time of the employment decision. For example, the First Amendment issue may not have been a factor at all in the subject employment decision. It would be senseless to say that a court may not consider evidence on one of the *Pickering* factors for purposes of the First Amendment analysis where no party had reason to present such information to the employer at the time of the employment decision.

In the appropriate case, the Court may choose to consider what factual determinations made by an employer following a reasonable investigation should be subject to the *Waters* analysis. This case, however, is not that case.

CONCLUSION

On the basis of the argument and authority set forth above, the Respondents respectfully request that the United States Supreme Court deny Greer's Petition for a Writ of Certiorari.

Dated this 25th day of October, 2000.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WISCONSIN

RONNIE B. GREER, Plaintiff, -vs- DEBRA H. AMESQUA, ALAN SEEGER, MARGARET MacMURRAY, BYRON BISHOP, LYNN HOBBIE, MARIO MENDOZA, THE CITY OF MADISON FIRE DEPARTMENT, THE CITY OF MADISON, THE CITY OF MADISON POLICE & FIRE COMMISSION, and ABC INSURANCE COMPANY, Defendants.	Case No. 98 C 560 C

Deposition of:

RONNIE B. GREER

Madison, Wisconsin
April 13, 1999

Reporter: Sarah R. Finley

* * *

[33] A I believe so.

Q What?

A That was the same thing that the commission imposed with the exception of the sensitivity training.

She had imposed the same thing they imposed, but she had initially suspended me for three months without pay and then mandatory attendance and sensitivity training. The commission simply ruled that I was suspended for three months. They never mentioned the other part of it.

Q Did you ever receive any sensitivity training after that incident?

A No.

Q Did you feel you needed it?

A No.

Q Have you received sensitivity training or anti-harassment training since you've been employed by the City?

A Yes. I was a discussion facilitator in the training for the firefighters and in the military.

Q What experience did you have in the military?

A I was facilitator in a similar program back in the Seventies.

Q Did you receive any training on the Administrative Procedure Memorandum prohibiting harassment in the

* * *

[35] guidelines. That basically said this is the rule. Sort of like something the City initiated.

Q At some point did you receive a copy the City's Administrative Procedure Memorandum prohibiting harassment in the workplace?

A Yes.

Q Did you receive that prior to 1995?

A I'm – I'm not sure, but I'm sure I did. I'm not sure about what day it occurred. Yeah, I would say, yes, before 1995. Once again, Mayor Soglin was the mayor the first time, so, yeah, I'd say before '95.

Q Did you read it when you received it?

A Yes.

Q Did you have any questions about that memorandum?

A Sure.

Q And did you address those questions to anyone?

A Yes.

Q Who was that?

A The administration, the district chief, the officer in charge at the time, the mayor at the time, the Affirmative Action officer, number of people.

Q Who was the Affirmative Action officer at the time?

A At the time it was Kirbie Mack.

Q The current Affirmative Action director?

A Yes.

* * *

[37] what the City has used that memorandum to cover. There was never any specifics from the City, in my mind,

that would tell you what it did cover and didn't cover. That was the problems I had with it.

Q I'm handing you what's been marked Exhibit 7 for your deposition.

A Uh-huh.

Q Exhibit 7 is the decision of the Police and Fire Commission dated July 31, 1998, and attached to that is a three-page document, Administrative Procedure Memorandum No. 3-5. Do you see that?

A Yes.

Q Can you look at Administrative Procedure Memorandum No. 3-5 and tell me if that's the policy that you received regarding harassment in the workplace?

A Yes. This is the later sort of edition of it, yes.

Q And you received a copy of this?

A Yes. Everybody got one every year.

MR. DEAN: Just a previous objection as vague as to time.

Q When did you actually receive it? When did you first receive, to your knowledge, any draft of the Administrative Procedure Memorandum prohibiting harassment in the workplace?

A I don't remember. I just know we got one every year [38] for a number of years.

Q And each year when you received a copy of this memorandum did someone explain to you what it meant?

A No.

Q What was the form in which you received a copy?

A It was in your – they have kind of a disposition system in the fire station. The chief officer brings out a big envelope with mail, they call it, for the day. And each copy had the firefighter's name and station number on it, and they basically distributed it to each firefighter.

Q Do you see the Administrative Procedure Memorandum attached to Exhibit 7 that has the subject of it in capital letters at the top?

A Yes.

Q And subject to this includes sexual orientation; is that right?

A Yes, it does.

Q Did you read through the Administrative Procedure Memorandum when you received it each year?

A Probably not, no.

Q Did you have any questions about Administrative Procedure Memorandum 3-5 at any time after 1996?

A The question is probably still the same.

Q Did you address those questions that you had to anyone [39] after 1996?

A Not that I can recall. I mean, no, I don't think so. I'm not sure.

Q Did you ever receive any training or any inservice from any City employee, including fire department

or City attorney's office, regarding Administrative Procedure Memorandum 3-5 or any earlier version?

A The earlier versions I think we did. The later version I'm not sure. I would probably say we – yeah, I'm not sure. I would guess we did, but I couldn't tell you specifically.

Q So if the City records indicate that you were present at training where this Administrative Procedure Memorandum was discussed you wouldn't dispute that, would you?

A No. One question. This doesn't seem to be the entire thing. There are a couple more pages missing from this.

Q What do you think is missing?

A There's one page that outlines the state law, that gives a commentary on the state law. Then there's another section that defines harassment, sexual harassment. This is not the whole thing. The whole thing is about five pages, I think, five or six pages. This is the cover – this was a cover letter for the

* * *

[41] Q Is there a difference between those, in your opinion?

A Sure.

Q What's the difference between those two?

A A person's sexual identity is either male or female. Sexual orientation is a term that someone made up to imply something that isn't true.

Q And in the context of this Administrative Procedure Memorandum 3-5, how was the City, to your understanding, using sexual orientation?

A To identify people who are homosexual.

Q And I assume you understood that sexual orientation as the City used it in its Administrative Procedure Memorandum 3-5 included homosexuality back in 1996; correct?

A Yes.

Q And you understood that back in 1996?

A Yes.

Q And you may not have agreed with that; correct?

A I don't agree with it, no.

Q What's your disagreement?

A That it's a false idea. There's no such thing as sexual orientation outside of someone being sexually oriented toward male or female. You're born male or female. That's how you're oriented. Basically there are people who have politically and otherwise, you

* * *

[43] or allowed, which I agree with it.

Q You'd agree that it's important to not have harassment in the workplace; right?

A Yes, I agree. I'd agree with that, right.

Q Is there anything about Administrative Procedure Memorandum 3-5 that you do not agree with?

A Again, this set before me now is not the entire part. The part I'm questioning about is that last part where it tells what the state law is, what it says and what it means, and my question was the way it's applied. It's basically – they take the state law that talks about sexual harassment, and it defines what that is and applies it to a number of things that don't apply, as far as I'm concerned. And this didn't specifically address harassment, I guess in my mind, specifically enough.

Q Is it a legitimate policy of the City to not want harassment in its workplace?

A It's a legitimate policy, yes.

Q The problem?

A The problem is what the City means by that.

Q Is it important, as far as you know, to not have harassment in the workplace?

A Again, yes, depending on what your definition of harassment is.

[44] Q Is it important to a firefighter that there not be harassment in the workplace specific to firefighters?

A Yes. Depending on what your definition of harassment is, yes.

Q Well, you understand the City's definition in 3-5 that we're talking about; you understand that?

A Again, the City doesn't define it well enough for me to make a determination under that. That was my question. I don't think – the City's policy doesn't specify

what it is, and I think they do it purposely. That's why I disagree with it. As a matter of fact, I know they do.

Q Well, who put together Administrative Procedure Memorandum 3-5?

A It came from the mayor's office, but I know the Affirmative Action and a number of people have input on it. I know what their intentions are, and basically we have something that's not too specific. That way you can't have loopholes in it. You make it broad enough where it can cover a number of things.

Q Who was involved specifically in putting together Adminstrative Procedure Memorandum 3-5?

A I know the Affirmative Action Office had input in it, Kirbie Mack and Nance Curtis, yes. I think Kirbie personally, and I've known her for 16 to 17 years.

* * *

[47] harassment; is that fair?

A Say that one more time.

Q In addition to objecting to sexual orientation being included at all in this memorandum, you also objected to what would constitute harassment?

A Yes.

MR. DEAN: Excuse me, I renew my objection. Just to make this more efficient, could we stipulate that there's a standing objection to this line of questioning?

MR. MODL: Yes.

MR. DEAN: You may answer.

MR. MODL: I think there was an answer.

Q You said yes to that question; correct?

A What was the question?

MR. MODL: Why don't you read the question back.

(Question read)

A My objection, again, the fact that it did not – it was specified what harassment was. That's my problem, and that was my objection. It's not included. It's not – to me it wasn't clear enough.

Q I'm showing you Exhibit 3 to your deposition. This is a copy of some of the work rules of the City of [48] Madison Fire Department. You received a copy of the City of Madison Fire Department Work Rules; correct?

A Yes, sir.

Q And you received those when you were in the academy?

A Initially, yes.

Q And the rules were explained to you at that time when you were in the academy?

A No.

Q Were the City's work rules, City of Madison Fire Department's work rules ever explained to you?

A No.

Q Did you ever have questions as to what specific work rules meant?

A Yes.

Q Did you address those questions to someone?

A Yes.

Q Why don't you tell me about that.

A I can't recall specific, specific incidents. But there had been a number of cases over the years where a rule's violation would come and up and they questioned someone about it. They would give you the rule and you basically asked – basically find out why there's – that is a violation as to what the rule meant. But I mean there are no specific rules at a specific time I can remember. But there have been [49] over the years.

Q So is it fair to say that the only times you raised questions as to what the fire department's work rules meant was when one of these work rules was being enforced against you?

A No. I didn't say that.

Q Okay.

A It doesn't matter, enforced against me or someone else. There's some rules you are aware of because they're just common sense things, you know. They are a rule. I couldn't quote specifically. You know the rule, what it said, what it means. You look it up and then discuss what it means.

Q Did you periodically receive new copies of the fire department's work rules?

A I don't believe so. I think I received probably one in training, just a guess. But I'd say probably one or two updates since the training.

Q If there were changes to any of the work rules, you would receive those changes?

A I don't think I received them personally. I think there is a copy sent to the station. You know, we have – there's a bulletin board, things posted on, changes, and then there's a book those changes go into.

[50] Q Was there a copy of the work rules that were available at the fire station where you were stationed?

A Yes, I would say so. I'm pretty sure there was one in the office, yeah, that I had possession of it.

Q If you ever needed to see a copy of the work rules, were they available to you?

A Yes.

Q If you had any questions about what a work rule meant, was there somebody available to answer those questions?

A Whole crew of people.

Q That would include the fire chief?

A Yes. But basically anybody could give their opinion on it.

Q If you had a question as to what a particular work rule meant, you could ask the fire chief; correct?

A Yes. One of the division chiefs were readily available to you, yes.

Q If you had a question as to what a rule meant that may relate to personnel, could you ask the assistant chief for personnel?

A Yes.

Q Was there any limitations ever imposed on you to who you could ask questions to as to the meaning of these work rules?

* * *

[53] A Yes.

Q Do you have an understanding where that's at in the court systems?

A Not really. I asked my lawyer.

Q Other than your discharge, any other discipline you've received other than what we've talked about?

A At the moment I couldn't recall anything. I'm sure if I could get a copy of my thing, I could probably go through it. But off the top of my head –

MR. DEAN: I can advise you if you want.

MR. MODL: Sure. Are there any others?

MR. DEAN: On the appeal of the '96, '97, it is in circuit court right now before Judge O'Brien. And just one small clarification. It was not a total 90-day suspension. It was two-month and one-month concurrence, so an actual 60 days served.

Q Do you have before you what's been marked as Exhibit 1 for your deposition?

A Yes.

Q What is that?

A It's a letter I sent out to the media.

Q This is the news release that's the subject of your [54] termination; is that fair?

A Yes, sir.

Q When did you prepare this?

A I don't know. Probably – it doesn't have the fax across the top anymore. I'd guess – I'd say April, May of '96, '97 – '97? Yeah, '97. So probably somewhere around April or May, I guess, somewhere in there.

Q Did you prepare it on the same day that you faxed it to the press?

A I'm not sure. I believe I did, but I couldn't say for sure.

Q Do you recall where you were when you prepared this?

A In my office.

Q At home or at work?

A At home. It's a church office in my home.

Q Did you prepare this on a word processor?

A Yes, uh-uh, uh-huh.

Q Exhibit 1 is the final version that actually went to the press; correct?

A It's the only version, yes.

Q That's what I was going to ask. Did you prepare any other versions that you changed?

A No.

Q Did anybody review Exhibit 1 prior to the time you [55] faxed it to the press?

A No.

Q Did you ask anybody to look at it?

A No.

Q Who did you send this to?

A I'm not completely sure. I know Capital Times, State Journal, but I'm not sure who else got a copy. I have a media group on my computer, and I don't know if I sent it specifically to those papers or sent it out to all the groups. I know Capital Times did a story. And it may have been their story or the State Journal's I was responding to, but I don't recall. So I couldn't say for sure, no. It may have been the TV station's, the radio station's – I mean newspaper's. Or it could have been just those ones that I got a copy back from.

Q Is there any way to determine how widely you disseminated this news release?

A No, not that I know of. Ask each one of them maybe, but I have no way of knowing that, no.

Q Looking at your computer, is there a way to determine how widely it was disseminated by you?

A No. Let me explain this. My computer is connected to a fax machine, and I do the word processor.

Well, at the time the computer was – I had a link between that

* * *

[58] published?

A No.

Q Nobody ever told you they saw an article or letter by you in the press?

A No, other than reporters would call and ask about things they got. They would discuss them, and they may do something or a story on something or comment. But as far as them publishing something I did, I don't ever recall seeing anything that I wrote. I mean up until recently, but not before.

Q Prior to the time you sent Exhibit 1 to the media, no individual had come up to you and said, "Ron, I saw in the State Journal," for example, "a letter to the editor you wrote"?

A No. People had said I saw you in this story, and they talk about this story. Nobody has ever said I saw a letter you wrote to the press.

Q In sending Exhibit 1 to the press, you understood there's a chance that they can publish some or all of this; correct?

A Oh, yes, yes.

Q And you had no objection to them publishing this; correct?

A No.

Q Not correct?

[59] A I had no objections to it, no.

Q And you never told the press that you did not want them to publish anything in Exhibit 1, did you?

A No, I didn't.

Q And even today you don't have any objection to the press having done an article based on your news release you provided, do you?

A No.

Q Mr. Greer, the news release says, "Homosexual Chief Rewards Homosexual Chief for Assault?" Do you see that?

A Yes, uh-huh.

Q Who's the homosexual chief you're referring to at the beginning of that line?

A It's the –

Q Who are the people?

A Chief Amesqua and Chief Holtz.

Q So this would be Chief Amesqua rewards Chief Holtz for the assault; is that who the personalities are?

A Yes. It's basically a question.

Q Had Chief Amesqua told you she was a homosexual?

A No, sir.

Q To your knowledge, had Chief Amesqua ever publicly acknowledged that she was a homosexual?

A Well, verbally, no.

[60] Q Did Chief Amesqua authorize you to make this sort of statement accusing her of being a homosexual to the press?

A Authorize? What do you mean by that?

Q Did she tell you it was okay for you to make such a statement?

A No. Why would she? I don't understand the question.

Q Did you ever –

A How would she authorize me to do something? I don't understand what you're saying. Explain the question again.

Q Did – strike that. Did you ask Chief Amesqua if you could make this kind of disclosure to the press about her?

A No.

Q Did Chief Amesqua ever say to you, "Mr. Greer, it's okay with me for you to go to the press and state to the press I'm a homosexual"?

A No.

Q Has Chief Amesqua, to your knowledge, ever stated publicly that she's a homosexual?

A Not that I know of, no, at least not in my presence.

Q You don't like homosexuality; correct?

A I don't like homosexuality? What do you mean I don't like –

* * *

[63] homosexual or a lesbian?

A No. She said partner. I mean my assumption is if somebody says it's their partner, then – I mean she didn't say they were business partners.

Q Did you ask her what she meant by partner?

A No.

Q Did you ever discuss with Chief Amesqua this conversation you had?

A No.

Q Did you ever ask Chief Amesqua if she was a homosexual or a lesbian?

A No. I asked her how she would overcome the opposition to her being homosexual and being chosen over someone who they thought was more qualified and also the fact that she had come from a place and volunteered and had no show of experience. All those questions were asked the first day she got here. She simply said her sexual activity or orientation wasn't relevant to her doing her job.

Q Is that something she said to you?

A Me and a group of people in the meeting. She said it to all of us. And she's made similar statements twice in my presence.

Q So at least two times she told you her sexual orientation, whatever that is, is irrelevant to her [64] doing the job?

A She said her sexual orientation and sexual activity are irrelevant to her doing the job. She didn't say whatever it is. She simply stated it had no bearing on how she performed her job.

Q Do you agree with that?

A Not really, no.

Q What's your disagreement?

A Being heterosexual in itself – homosexual doesn't – being homosexual doesn't affect someone's physical performance of their job in her position or in her position of leadership. If your sexual activity, your sexuality thing or any other character issue becomes an issue in leadership when you are in charge of a unit where you're respected – your leadership abilities and your character is important. And fire service, that's one of the places where people need to respect you and at least feel confident that you're able to do the job and you're trustworthy. If your character becomes an issue, then the trust breaks down. The trust breaks down more, and how people respond breaks down. And the firefighter – when that happens, people get hurt or die.

Q Is character associated with whether or not somebody is a homosexual?

[65] A In my mind, yes. Most people I know, yes.

Q What's the association in your mind?

A Homosexual activity is a perversion, and usually sexual perversion is related to someone's character whether or not they're a good character or not. If someone is involved in pedophilia or some guy sleeps around with different women when he's married, it's a character issue.

Q So if somebody is a homosexual, in your mind, that reflects negatively on their character?

A Yes.

Q Is that something that you've publicly stated, I assume?

A A number of times, yes.

Q It's something that you stated prior to the time you sent out this press release marked as Exhibit 1?

A Yes.

Q Have you said that to people at the fire department?

A Yes.

Q Have you made those statements to individuals at the fire department prior to the time you sent out this news release?

A Yes. Now, my beliefs, my religious belief and faith about how that affects – I mean it's never been a secret. I'll put it that way.

[66] Q Do you believe that Chief Amesqua is a poor leader because you claim she's homosexual?

A I think she's a poor leader for a number of reasons. One aspect of that is her character. People don't –

firefighters in particular – don't necessarily trust her because of her – that one aspect of her character. But there are a number of other reasons why, also.

Q Is one aspect of her character that you're talking about your belief that she's a homosexual?

A Yes. The question was what I thought everybody else thought. Is that what you were getting at?

MR. MODL: Why don't you read him the question back before the last one. (Question read)

A So I kind of went out too far, but anyway.

Q So if I understand your testimony, it's your testimony that if somebody's a homosexual, that negatively reflects their character; correct?

A Negatively reflects on their character, yes.

Q And character is important for leadership in the fire department; correct?

A Yes.

Q It's one of the qualities that's important?

A Yes.

* * *

[68] mainly the conversations that have not been initiated by me. I had commented on other people's opinions about it.

Q Homosexuality, is that a perversion?

A Yes.

Q And that's an opinion you've expressed to others?

A Sure.

Q That's an opinion you've expressed prior to sending out the news release, Exhibit 1?

A Yes.

Q And I assume that's also a view you've expressed subsequent to sending out Exhibit 1, after?

A Oh, yes.

Q You said that you were at Chief Amesqua's swearing in ceremony.

A Yes.

Q And as I understand –

A Excuse me, take that back. The incident at the fire station with her, the announcement of them hiring her. The swearing in ceremony is actually different. I mean I was at the fire station the day that they announced who the new chief was, and she was there for a press conference. That wasn't swearing, no. That was a different ceremony altogether. I was at both those actually.

[69] Q Who was there for the press conference that you just talked about?

A That would be Brenda Pfeiler, the president of the Police and Fire Commission. And if I recall, there were at least two other commissioners there, I think. There was the senior staff chief officers. There were a number of firefighters, off duty, and then people were – there were

on-duty firefighters. Kirbie Mack was there from the Affirmative Action Office. I think Nance Curtis was there, also. That's the best I can remember. There were some other people there, but most of the people I recognize.

Q Were you present at that press conference because it was at the station where you were stationed?

A I was there because I was stationed there that day and just my interest, also. I mean everybody was wondering who the new fire chief was going to be. We all sort of knew, but that was the first day they actually announced it.

Q Were you on duty that day?

A Yes.

Q So did you attend that press conference to hear what the announcement would be?

A Yes.

Q When you heard the announcement that it was Chief [70] Amesqua, did you have a response to that?

A Response as what? You mean –

Q Did you verbalize any response to that announcement?

A When the reporters talked to me, yes, later, but not at the press conference, no.

Q Was that the same day the reporters talked to you?

A Yes.

Q What did you tell reporters that day?

A Well, that I was concerned about the process. I was concerned about the qualifications of the candidate there and that I felt that the Police and Fire Commission may have very well engaged in something that was illegal. And I –

Q What did you mean by that, engaged in something illegal?

A They hired someone that was not qualified, and they purposely overlooked other qualified candidates.

MR. DEAN: I think the term was illegal rather than legal.

A They did something illegal I thought. Illegal to hire her.

Q Did you believe that – strike that. Did you state on this date of this press conference that you believed the Police and Fire Commission considered Ms. Amesqua's sexual orientation in the hiring?

* * *

[72] assumed also that she was a lesbian just as they were.

Q At the press conference that we've been talking about, did you make any statements, anything negative to Ms. Amesqua –

A To her, no.

Q – about her?

A No. Not that I saw was negative, no.

Q Did you – were you critical of the decision to hire her?

A Oh, yes.

Q Did you believe that Ms. Amesqua was competent to be fire chief?

A No.

Q Did you believe Ms. Amesqua's sexual orientation and the character flaw that you associate with that was one of the reasons that she was not competent?

A I believe then and believe now it would be a factor that she would have to overcome in that case. It would be a problem, yes. But did it I believe in and of itself prohibit her from doing her job, not physically. Personally, no.

Q Did you believe that if Ms. Amesqua was a homosexual or a lesbian that that – strike that. Did you consider homosexuality a character flaw?

A What do you mean – yes. If you mean that I think it [73] reflects poor character, yes.

Q Did you believe at the time of this press conference that this character flaw would somehow impede the chief, Chief Amesqua in doing her job?

A Effectively, yes. That was my question to her, as to how she would overcome that.

Q After the hiring decision was announced at this press conference, had you made any other statements critical of Chief Amesqua's leadership?

A Yes.

Q And is there a way, Mr. Greer, to quantify the number of times you've done that?

A No. I couldn't begin to remember that.

Q Between the time of the announcement of the hiring decision and the date of your termination, July 31, 1998, would you say you've been critical of Chief Amesqua in excess of 50 times?

A I have no way of knowing. To guess, technically I'd say – well, yeah, you could say more than 50 times.

Q And would your criticisms of Chief Amesqua have included being critical of the fact that you believe she was homosexual?

A No.

Q No?

A No.

* * *

[75] So, yes, it includes her, but I never made that specifically about her.

Q You've made statements about your views on homosexuality; correct?

A Yes. I think it's sinful. It's destructive to the individual and as well as that society accepts it.

Q Have you made statements publicly that you believe people who are homosexuals should be discriminated against in jobs?

A Yes. On some level, yes.

Q And you've made statements that in your belief homosexuals should not be allowed to hold positions in authority; correct?

A Explain that again now. Say that one more time.

Q Have you made statements that you believe homosexuals should not be permitted to hold positions of authority?

A Yes. In some cases, yes.

Q Is it your belief that that would include positions such as a fire chief for a metropolitan area like Madison?

A Yes, sure. If that's going to affect her on a job, yes.

Q Did you express views that you believe homosexuals molest children?

[76] A Yes.

Q Are these all views that you've expressed prior to the time you sent out Exhibit 1, your press release?

A At some time probably, yes, but not publicly, no. I don't recall doing it publicly, but I may have.

Q Well, there are views that you've expressed to other people such as firefighters; correct?

A Yes. The views I've discussed with the firefighters, I mean it's not like I expressed my view to them and then I convinced them that it's true. Usually the conversation is prompted by something they say, and we've discussed the matter.

Q You've expressed views that homosexuals are the cause of human disease; correct?

A No.

Q Never said that?

A No.

Q Are there any other statements that you recall expressing to other people about your views of homosexuality other than what we've just talked about?

A There are countless statements and views. I mean my views, I can't recount them all. I preach every Sunday. I state nationally. There's no way of quantifying that. It's impossible.

Q Are there any other statements that you recall making

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[78] to them emotionally and spiritually, and it's the society that permits that and promotes that. Now, those folks involved in those activities, it is an inflection of bad character, and because of that, people view them differently. And at the same time it is not something that they are born with. It is something that they choose to do. Given no matter what the circumstances are, there are some people who are more prone to be involved than others. But their choices – and I'm saying because it is – they can also refuse and back out and leave that lifestyle and stop doing that activity. But at the same time sexual – homosexuality is no different from any other sexual activity out of marriage. It is sinful. It is all a perversion of what God intended. That's to put it in a nutshell.

Q Exhibit 1, the news release, you refer to chief – or Division Chief Marcia Holtz as a homosexual; is that correct?

A Yes.

Q Has Division Chief Marcia Holtz ever given you permission to disclose to the press or to the public that she's homosexual?

A Again, I don't understand that question. Because how does someone give you permission to say something that [79] you viewed. If I told someone that Michael is a man, heterosexual because he has two daughters, I mean that's not something you would think about or even give me permission to say. How do you do that?

Q Have you ever asked Chief Holtz if you could disclose to anyone her sexual orientation?

A No. I don't understand the question. Why would I ask that? I don't understand the relevance. I don't know how that makes sense.

Q Has Chief Holtz ever stated to you that you have her consent to disclose her sexual orientation?

A No.

Q And that means to anyone; correct?

A What?

Q Chief Holtz has not authorized you to discuss her sexuality orientation with anyone; correct?

A I have to say correct because the question doesn't make sense to me. I mean she has never said, "Hey, why

don't you go out and tell everyone I'm homosexual." No, the idea of authorizing me doesn't make sense. There's no such thing as authorizing someone to say, say something that you publicly are. That doesn't make sense. It's like authorizing – it's like for you authorizing me to say that you're a man or you're white or you're five foot whatever or

* * *

[81] firefighter with me.

Q When was that that you had that conversation with her?

A Very early on. We came on together back in the early Eighties.

Q And what was the conversation?

A I couldn't tell you specifically. I know that I have spoken to her and a number of other – I came on the job. There were a number of homosexuals in my class together, and we trained together before we came on together. So I know I've had the conversation countless times.

Q Did Ms. Holtz tell you that she was a lesbian?

A I would assume so, yes.

Q Do you recall if she did?

A Not specifically, no.

Q Your news release here, Exhibit 1, talks about an investigation into this Ron Cato matter.

A Correct, yes, sir.

Q Were you part of that investigation?

A No.

Q Were you present when the incident between Mr. Cato and Ms. Holtz occurred?

A No.

Q Were you asked to be part of that investigation?

A No.

[82] Q Were you questioned as part of the investigation into that matter?

A No.

Q Did you receive a copy of any of the investigation findings?

A Before this?

Q Before you did your news release.

A No.

Q Have you received – strike that. Do you know who did the investigation?

A Yes.

Q Who was that?

A Chief Bill Spohn.

Q And have you spoken with Bill Spohn prior to the time you authored and sent out Exhibit 1 –

A Yes.

Q – about this incident?

A Yes.

Q What conversation did you have with Chief Spohn?

A I don't know specifics. I don't know specifics. But let me put it this way. Each one of the chief officers serve as a chief in charge. That means they are the chief officer in charge of the City for that evening, after work hours, and those chief officers, they reside at the station where I work. So we eat

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[84] What do you recall as to the content of those conversations with Chief Spohn regarding his investigation of the Cato matter?

A In general, I can't – I mean I can't specifically tell you what we discussed. I can tell you that the conversation wasn't very long with Chief Spohn.

Q And it wasn't very long because he wasn't going to disclose specifics; correct?

A Yes, or certain specific things he wouldn't reveal.

Q Did he reveal to you who he spoke with in doing his investigation?

A Not specifically, no, and generally, yes.

Q Did he reveal to you what anyone had said to him in the course of his investigation?

A I don't typically recall the specifics, no.

Q Did he advise you as to what conclusions he had come to?

A No.

Q Did he advise you as to the reasons he came to any particular conclusions?

A No.

Q Did Chief Spohn tell you what recommendations he was making regarding his investigation?

A No.

Q Is there anything else you recall about what [85] Chief Spohn said to you regarding his investigation of the Cato/Holtz matter?

A No. Not right offhand, no.

Q Did you speak with anyone else in fire department management about that investigation prior to the time you prepared Exhibit 1?

A I don't recall specifically who I talked to, any particular one at the time. But I can say generally I know we've talked to – for every chief officer that's been in charge, there's a different one probably each day. So I'm sure that – or in the conversation around the table we've talked about it. That I'm sure of, but I can't say specifically we talked to this chief on this day and had this conversation with him.

Q Has anyone told you prior to the time you prepared and faxed to the press Exhibit 1 specifically what occurred during the investigation of the Cato/Holtz matter?

A Say that one more time.

Q Sure. Have any of the chiefs that you have dinner or lunch or breakfast with informed you prior to the time you sent out this news release marked as Exhibit 1 any specifics about the investigation into the Holtz/Cato matter?

A Not offhand that I can remember; not specifically

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[87] would say if we saw them in the station that day, I'm pretty sure we talked to one of the chief officers about it. There would be no way in the world we didn't.

Q Who did the investigation?

A Chief Spohn.

Q Anyone else?

A I'm not sure who else was involved in it, no.

Q As you sit here today, are you aware of anyone else being involved in that investigation?

A No, not right offhand. Not right offhand, no.

Q What you know of that investigation, are you critical of the manner in which the investigation was handled?

A Critical in the sense that they did it internally, yes.

Q One criticism you have is that an internal person did the investigation?

A Right.

Q Any other criticisms?

A I don't know. The fact that it was done internally, that we didn't see – no one saw the actual investigation. It wasn't available to anyone, anybody. Those would be the two general criticisms.

Q Having done the investigation internally, is that something that's different from normal fire department [88] practice?

A This isn't normal. Something like this never happened before. But given other instances, there wouldn't be anything – it wouldn't have been different in other investigations, if they want to call it investigations, no. I don't recall having an investigation formally. There's never been an incident like this. That's what I'm saying. There have been particular questions and inquiries about her issues, but never anything like this.

Q Who makes the decision whether to have an internal versus an external person doing the investigation?

A I don't know. I assume the chief would or the mayor.

Q Do you know who made the decision in this case?

A I don't know, but I understood the chief made the determination. That's what I was told.

Q Do you know the reasons why the person made the decision to have an internal versus external?

A No.

Q Have you ever discussed with Chief Amesqua any of the findings of the investigation?

A No.

Q Have you discussed with Chief Amesqua what recommendation Chief Spohn made as a result of his investigation?

[89] A No.

Q Have you discussed with anyone what recommendation Chief Spohn made as a result of his investigation?

A Before or after the news release?

Q Before the news release.

A I discussed with people on my shift and the union president and union officers, yes.

Q What discussion did you have with the union on that subject?

A Mainly, specifically what the decision was and, you know, if they have the investigation or they've seen that. In particular, things about what she said in the letter, what the union actions or involvement was or was going to be, those kind of things.

Q Prior to sending out Exhibit 1, had you seen the investigation?

A No. No, I didn't.

Q Prior to sending out Exhibit 1, had anyone told you the bases for the recommendation, if any, that Spohn made?

A Had anyone told me the basis for his recommendation?

Q Yes.

A No.

Q Prior to sending out Exhibit 1, were you aware of what bases the chief had for the decision that she made [90] regarding discipline?

A Ask that again.

Q Prior to you sending out Exhibit 1, did you have knowledge as to the reasons for Chief Amesqua's decision as to discipline in this situation?

A I have reasons about that, but not – no specific information that someone gave me in particular for that investigation or her decisions, no.

Q Have you ever spoken with Chief Amesqua about her decision as to what discipline to impose in the Cato/Holtz matter?

A No. If I have, I don't recall it, so I doubt it very seriously.

Q You seem critical in your release here, that part of the discipline was the six-month extension of probation.

A Which part are you reading?

Q I'm reading the last sentence of the first paragraph. You seem critical that this was imposed as a discipline because Chief Holtz herself had suggested it; is that correct?

A Yes.

Q What's the criticism there?

A That it is highly unusual for someone else to suggest what their disciplinary punishment should be. That's [91] basically unheard of.

Q Have you ever given discipline to someone?

A In the fire service?

Q Yes.

A No.

Q And the basis of your saying that it's highly unusual for a chief to base discipline, at least in part, on a suggestion by the subject of the discipline, why do you say that?

A Well, 17 years, I have never seen it or heard of it.

Q Well, do you hear about every disciplinary action?

A Every one.

Q Why do you hear about every disciplinary action?

A We all hear about it. That's the nature of the fire station. There's very little that goes on that you don't hear about, especially when it goes to this matter. I don't think there's ever a disciplinary matter that people don't know about it.

Q It's a very close group of guys.

A Extremely, guys and women.

Q I use guys generically. It's a Milwaukee term. I take it men and women who are firefighters have to get along.

A Right. We call each other guys, too.

Q Is it critical that there's good work relationships [92] between firefighters?

A Extremely critical.

Q Life and death kind of situation?

A Yes.

Q I mean you, as a firefighter, when you go out on a call, you need to be able to depend on your other firefighters?

A Exactly.

Q And they need to be able to depend on you?

A Yes.

Q If there's questions about whether they can trust you, that's a serious problem?

A Extremely serious, yes.

Q And if you have a question whether you can trust someone, that's a serious problem?

A Extremely, yes.

Q Do you have any questions in your mind when you're out on a call whether you can trust somebody who's homosexual?

A My trust has nothing to do – my trust has nothing to do whether they're homosexual or not. There are some homosexuals I don't trust. There are some heterosexuals I don't trust.

Q Somebody who's a homosexual, does that cause you to distrust their leadership ability?

[93] A I would distrust – have some level of distrust for their leadership ability only in the sense I would question that character, and my trust would be falsified. I'll go that way.

Q Sure. To the extent character influences leadership that you'd have a concern?

A Yes, only in the area of trust.

Q Paragraph No. 2 of your press release, Mr. Greer, you talk about physical and verbal assaults. Do you see that at the beginning of the second line?

A Yes.

Q What verbal assaults were there that you know of?

A Mainly the screaming at him. Just mainly the screaming.

Q What did Ms. Holtz say to Mr. Cato?

A She screamed "Where's your crew? What are you doing? Where's your crew," as best I can recall. The words "your crew" sticks out other than anything else.

Q Is something wrong with the words "where's your crew"?

A Oh, no. No, it's – no, it's not meant to be a question. It wasn't a question to be answered. First, the tone of it and asking the question. His crew, of course, is right there next to her, behind her. There's only three people there; him, her and another person.

[94] Q I'm focusing on the content. You don't have a concern with the content of the question, do you, "Where's your crew"?

A Not particularly, no. I mean the words, no.

Q How do you know that's what she said?

A It's on the videotape, and I heard it. I heard it on the newscast, too.

Q So other than the video report, do you have any other information as to what Chief Amesqua said – I'm sorry, Chief Holtz said?

A Before this or after this?

Q Before you sent out your April 1st – or your April press release.

A I've had conversations with other people who had told me about things that was said and done, but no specific things, no.

Q Prior to the time you sent out the news release marked as Exhibit 1 had you talked to Cato about what was said?

A I honestly can't say. I can't remember talking to him after – or before the news release.

Q Prior to the time you sent out Exhibit 1, had you talked with Chief Holtz about what she had said?

A No.

Q Prior to the time you sent out Exhibit 1, had you

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[99] believe should have investigated the Holtz/Cato matter?

A Me personally? I would have chosen probably the police department or someone like that or maybe even a private firm.

Q Why?

A I probably would have chose the police department.

Q Why would you have chosen somebody other than a chief officer?

A It really wouldn't in my mind make sense because there's too much – there's too much interest on that chief's part, in my mind. Too much pressure on that chief to give information for – to do something that is satisfying to the chief, and then it would be too much pressure on that chief officer from their subordinate – I mean their colleague. To me, if you want to do the investigation to get a sort of unbiased result or opinion, then you do it with somebody who doesn't have an interest one way or the other.

Q Are you aware of any particular relationship between Chief Spohn and Division Chief Holtz?

A They're senior staff members. They're all on the same staff.

Q Other than being staff members, are you aware of any special relationship between them?

[100] A Special in which way? I mean they have contact. They work together. They interact at different

times in their jobs. But other than – you mean a personal relationship?

Q Yes.

A No. Not that I know of, no.

Q Is there any information that you have that Chief Spohn did his investigation in a way that he was influenced by the fact that Chief Holtz was a fellow staff member?

A No. I don't have any information of that. I mean other than the fact that it would be sort of common assumptions being a senior staff member. There would be some influence as a possibility of that.

Q Prior to the time you did your press release, had anybody told you that Chief Spohn was some way improperly influenced in his investigation?

A No.

Q Did anybody tell you that Chief Spohn was improperly influenced in the recommendations that he gave?

A No.

Q Are you aware of any activity by Chief Spohn during the course of his investigation that you think is improper?

A No, other than I think the investigation – him doing [101] the investigation itself was improper.

Q Right, I understand that.

A Not myself doing anything improper, no.

Q Are there people that Chief Spohn should have spoken with, in your opinion, that he failed to speak with?

A Again, I don't know. Not to my knowledge.

Q Because you're not sure who he even spoke with, are you?

A Not before I wrote this, no. I have since learned who he spoke to from his report, or parts of it rather.

Q Page 1 of your press release, fourth paragraph down. The last statement here is, "Or could the conclusions of the investigation be simply disregarded without opposition by that subordinate." What does that mean?

A "Or could the conclusions of the investigation be simply disregarded without opposition by that subordinate." Let me go back. "The investigation was done by another division chief who is a subordinate to Chief Amesqua and a staff member with Division Chief Holtz. Is it possible that the investigating officer could have been unduly influenced? Or could the conclusions of the investigation be simply disregarded without opposition by that subordinate?" And in that sense, could Chief Amesqua make a decision about the results of the investigation and completely

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[104] She's also authorized to put things before the commission, at least that's my understanding. Now, in that sense, the mayor can make certain decisions. There's also the political factor.

Q Can the mayor discipline firefighters?

A My understanding is yes.

Q Can the mayor discipline an assistant chief?

A Sure. That's my understanding. The mayor can fire an employee. That's discipline.

Q Can the mayor have fired you?

A I understand – as I understand it, yes. I mean the mayor is my boss. I mean technically he's the boss, or she is.

Q In your news release here you say that Women in Fire is a predominantly homosexual organization; is that right?

A It's viewed and perceived by most firefighters in this area as being a predominantly lesbian organization.

Q Is that how you view it?

A Yes.

Q Is that how you viewed it at the time you wrote Exhibit 1?

A Yes.

Q Is that a criticism you have of that organization?

A No. It's an observation.

[105] Q I'm at the bottom of paragraph 5 on page 1. You have a statement here, "Is it possible that some favoritism has been shown to a fellow member or possible friend?" Do you see that?

A Yes.

Q Is it your suggestion in raising that point that Chief Amesqua may have some favoritism to Chief Holtz based on homosexuality?

A I would say that – in my mind there's a possibility that she showed favoritism based partly upon the fact that they're both lesbians.

Q And that's the suggestion you're communicating in this news release with that sentence; correct?

A No. With that and the fact that they have a friendship between the two.

Q Sure. They're two different points; correct?

A Yes.

Q One issue is whether she's showing, she being Chief Amesqua, showing favoritism based on friendship; correct?

A Yes.

Q And the second suggestion you're making is is Chief Amesqua showing favoritism based upon homosexuality; correct?

A Let me go back. There were three things, their [106] friendship, their membership in the organization and about the homosexuality as well, yes.

Q Are three of those things suggestions you're raising as to why Chief Amesqa may have shown favoritism?

A I'm just asking the question and the fact it's the reasonable question to ask. I mean is it possible that

that's the case? I'm saying these questions weren't raised, and they should be.

Q Why don't you listen to the question because this is what the question is. In your press release, that statement we've just talked about, that being is it possible that some favoritism has been shown here to a fellow member or possible friend?

A Yes, sir.

Q Is one of your suggestions in that being whether Chief Amesqua showed favoritism to Chief Holtz in discipline based on homosexuality?

A Again, the statement isn't suggesting anything. It's simply presenting the possibility.

Q Is that one of the possibilities?

A That's one of the possibilities, yes.

Q In the next paragraph, which is the final paragraph at the bottom of page 1 of Exhibit 1, you referenced "Both are homosexual women who have been seen in the past, and still now among many, with clear agendas."

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[108] their ideas about women and leadership and how much better that is than men leadership positions. I know that also to mean that's something that Marcia has been doing and pushing for ever since we've been on the job. That's radical to me, and that's implied, yes.

Q I've asked you specifically about the homosexual portion of it. You view that as part of the agenda of the Women in Fire Service to advocate for homosexuals?

A Yes.

Q And do you oppose that?

A Yes.

Q And later in this paragraph you referenced the radical agendas. Do you see that?

A Uh-huh.

Q Yes?

A Yes, I'm sorry.

Q The radical agendas refers to, at least in part, advocating for homosexuality; is that fair?

A I'm not understanding that question.

Q Sure. I'll rephrase it.

A Go ahead, I'm sorry.

Q The sentence talks about their radical agendas; do you see that?

A Yes.

[109] Q When you talk about their, are you talking about Chief Amesqua and Chief Holtz?

A Yes.

Q And is part of the two chiefs' radical agenda to advocate for homosexuals?

A I would say, yes.

Q What else is included in the radical agendas of these two fire officers?

A Advocating for women and also advocating a change in philosophy and attitude toward fire service.

Q What's that change in philosophy?

A That our – for instance, in the past what makes a good firefighter is courage and strength and agility and coordination; whereas, in my conversations with Marcia and people or friends with her in a certain group, they, and Chief Amesqua also, their idea has more to do with your attitude and – not attitude, but your ability to get along with certain people, your attitude towards individuals, and that's more important than the agility, strength and that sort of thing.

Q I have now turned the page over which is the second page of your press release here, news release.

A Yes.

Q The first paragraph you're referencing a situation, [110] second sentence, "It's not okay to communicate verbally my views on a department chief officer's handling an issue." Do you see that?

A Yes.

Q What are you referring to there, Mr. Greer?

A It's not okay for me to talk about Chief Amesqua's handling of certain incidents, but it was okay for her to physically abuse someone.

Q And what are you talking about handling that you're referring to here?

A Now that you mention it – I would assume Chief Amesqua handling the situation involving my case before

– I would assume that I meant – I'm not quite sure all of a sudden.

Q At the time you did this press release, this document, Exhibit 1, you had pending before the Police and Fire Commission the suspension issue; correct?

A Yes, sir.

Q And you had not received a decision on that yet; correct?

A No.

Q Not correct?

A That's correct, I'm sorry.

Q And is this reference in the first paragraph on page 2 of your news release, is that referring to your [111] disagreement with Chief Amesqua that resulted in that PFC proceeding?

A Say that one more time.

Q Sure. Is paragraph, the first paragraph on page 2 of this release, is that referring to your disagreement with Chief Amesqua that led to that PFC proceeding?

A I would assume that, yes.

Q And you say that the department and City is willing to spend thousands on a case of an alleged comment without proof.

A What comment are you talking about? Right now I don't recall.

Q Is that comment –

A Comment on proof? What comment?

Q Was that comment –

A Let me think about that. I don't recall.

Q Was that comment part of your suspension case?

A The case was involved –

Q You don't recall?

A I don't remember that.

Q Is it likely that this comment without proof that you're referring to is some dispute, whether we recall which one it is, that you had with Chief Amesqua?

A I don't know. I would assume that, yes.

Q And the next part of that sentence talks about an [112] alleged harassment without a complaint or proof. Do you see that?

A Yes.

Q Is that referring to a dispute that you're having with Chief Amesqua?

A Again, I would assume, yes.

Q And is that the allegation that's part of the suspension proceeding that's going on at this time?

A Again, I would assume so.

Q Because you were being accused of harassment in that proceeding; right?

A Right, uh-huh.

Q Yes?

A Yes.

Q Then there's a discussion again in this first paragraph on page 2 of an alleged rule violation. Do you see that?

A Yes.

Q And that is, again, a disagreement that you're having with Chief Amesqua?

A Again, yes. I would assume so, yes.

Q And you believe that to be referring to the suspension proceeding that's in front of the Police and Fire Commission at this time?

A Again, I would make that assumption, yes.

* * *

[115] Q What's your intent in this paragraph?

A It's basically the idea of that here are incidents that have taken place that are far less serious than what's taken place before, and the discipline is far more harsh than what was given to Chief Holtz.

Q Do you know the circumstances around Mr. Cato being terminated?

A I know what I've been told by the training chief – I mean the assistant training chief, Chief Knudtson and one of the training officers.

Q Why was Cato terminated?

A I haven't got that yet. That's the problem.

Q You're not personally investigating that, are you?

A Not investigating. I questioned both Chief Knudtson Captain Olson, Captain Willauer. I've talked with a number of people and the union in trying to find out specifically why he was terminated, and so far I've never received an actual reason as to why.

Q Are you still pursuing that?

A No.

Q Do you know whether Mr. Cato brought any kind of legal action?

A As I understand it, he has since then, yes.

Q Do you know how that's been resolved, if it has?

A No.

[116] Q Fair to say that your news release, Exhibit 1, is critical of Chief Amesqua's disciplinary decision of Ms. Holtz?

A Including, yeah, handling the situation altogether. Are we at a point where we can take a break?

Q Sure.

(Recess)

Q After you provided Exhibit 1, the news release, to the press, did you then learn that there was an investigation into that matter?

A Say that one more time.

Q After you sent Exhibit 1 to the press, sometime in April of 1997, did you learn that the fire department was investigating that conduct?

A Oh, you mean the letter itself? Oh, after that, yes.

Q How did you learn that there was an investigation into the conduct in sending that letter?

A I don't recall specifically. I would assume that Chief Saxe called me.

Q Was Chief Saxe the individual who was investigating?

A Yes.

Q Do you have any complaints about the selection of Chief Saxe as the investigating officer?

A No.

Q You didn't have any – there was no bad blood between

* * *

[118] because you aren't allowed to ask any questions or present anything. So I had a problem with the whole process altogether.

Q What does that mean that Chief Saxe assumed that you had lied; lied about what?

A When I first met with him, his questions, the things he said assumed that I had lied about, you know, something. I'm not sure exactly what I lied about, but he didn't seem to be specific about that either. But the assumption was from the question that I had lied.

Q What is it that led you to believe that there was a question about whether you lied?

A His questions and his conduct.

Q What is it that led you to that conclusion?

A I can't tell you right offhand right now. I know that my impression was the fact that he was implying that I was lying, and that was part of our interchange in the conversation.

Q Did Chief Saxe ask you if you had prepared this press news release, Exhibit 1?

A I can't say specifically. I'm sure he did, yeah.

Q And you acknowledge that you did it; right?

A Yes.

Q Did Chief Saxe ask if you provided a copy of this to [119] any media?

A Yes.

Q And you acknowledge that you did; correct?

A I would assume that, yes.

Q Is there something in the content of Exhibit 1 that you believe Chief Saxe believed to be a lie?

A Well, again, that's my assumption. Something about what I said was assumed to be false.

Q Do you have any idea, as you sit here today, what it is in the content of Exhibit 1 that you believe Chief Saxe thought was untrue?

A No. I don't remember that.

Q Chief Saxe at some point held a predetermination hearing, correct, relating to this matter?

A That was, as I understand it, the predetermination hearing.

Q Do you know what investigation Chief Saxe did other than meeting with you?

A Other than talking to the reporter and having the other chief officer talk to someone – I'm not sure what that was. But I, again, in my mind, as it was presented to me, as I recall, I was there to ask any questions as part of the investigation. His investigation involved that hearing, and then he makes a recommendation to the chief. That's all it included [120] in the investigation.

Q Part of the investigation is talking with you; correct?

A Right. The so-called predetermination hearing is part of the investigation.

Q What else was involved in Chief Saxe's investigation other than talking to you and someone talking to the reporter?

A Again, him talking to the reporter and having another chief officer to talk to other individuals. Now, who they talked to, I don't know. And it was whoever my chief officer who was over, I guess, my station. I don't recall who was sitting there. I think it was Aldworth. I'm not sure.

Q Have you ever learned who all were talked to regarding this matter?

A No. That's another problem I have with the investigation.

Q To your knowledge, are there people that you think should have been talked to that were not talked to in this investigation?

A Right offhand, right now I couldn't tell you. But I mean give me some time, and I'd probably think of other people, yeah. With you right now I couldn't sit here and say, yeah, she talked to this person, that

* * *

[124] A Yes.

Q Is that your recollection of who was there?

A Yes.

Q Anybody else there?

A Not that I recall, no.

Q Were you given the opportunity to have legal counsel represent you if you chose?

A No, I don't recall, no.

Q You don't recall being given of choice of having legal counsel or a union represent you?

A Lieutenant Conway was a union rep, yes.

Q Were you given the opportunity to have one or the other or both be present on your behalf?

A Again, no. I brought Lieutenant Conway with me, and basically the discussion was that he was going to be in there with me.

Q Was there any objection to him being in there with you?

A Not that I recall. There was a conversation, but I don't recall any objection to it. He was the union president.

Q It's standard practice that there's a union representative present at the predetermination hearing; correct?

A Pretty much so, yes. You mean if you choose to, they [125] can't say no?

Q And nobody said no in this case?

A No. Not that I recall, no.

Q So at the predetermination hearing, I understand you're asked a series of questions; correct?

A Yes.

Q And you answered those questions?

A The best I could, yes.

Q Did you have an opportunity to tell your side of the story?

A No.

Q Why do you say that?

A Because I didn't. He asked me questions. I answered the questions. That was it.

Q I understand you wanted to ask some questions back; correct?

A Yes.

Q You weren't permitted to do that; right?

A No.

Q Were you permitted to make whatever statements you wanted to make regarding this matter?

A Yes, only pertaining to the questions.

Q When you got to the end of the questions, was there a question about, "Is there anything else you wanted to add"?

[126] A Is there anything you wanted to add? Yes, basically it had to pertain to the question at hand.

Q And did you have anything else to add?

A I don't recall. Probably wasn't much of anything other than the fact of saying probably how unfair the thing was and didn't make sense. I recall that being my attitude and my opinion.

Q Understanding that you weren't permitted to ask questions, were you prevented in any way from making any statements you wanted to make at this predetermination hearing?

A Yes. I was told to stick to the questions.

Q And when you got to the last question as to whether or not there was anything else you wanted to add, did they limit what you could say?

A Chief Saxe, as I recall.

Q What did he say?

A He basically said to limit my comments to the questions at hand. I wanted to ask questions about other things and question certain people, and he said, as I

recall, it would have to be pertaining to those questions. I wasn't allowed to talk about other stuff, as I recall.

Q You weren't allowed to ask your own questions; right?

A Right, exactly.

[127] Q But you were allowed to make statements that you wanted to make?

A I was allowed to answer the questions, yes, if my statements pertained to the question. I was allowed to do that. There was nothing there that indicated I was allowed to make statements outside of those questions.

Q And when you're told you can add anything else you wanted to but you can't ask questions, did Chief Saxe limit you to what you could say?

A Again, I don't recall him telling me I could add anything I want. I recall at the end I could make statements or make a general statement about the questions at hand but not add additional stuff, no.

Q Did you do that; did you make a statement about the procedure at the end?

A I don't recall specifically. I mean right offhand I don't recall. I would say I probably criticized the procedure, just knowing me, but to specifically tell you what I said, no.

Q You would have said that you thought the lawsuit was unfair; right?

A I'm pretty sure or something to that effect.

Q Were there things at that meeting, at the predetermination hearing that you wanted to say [128] separate from questions you wanted to ask? Were there things you wanted to say that you did not have an opportunity to say?

A Again, I can't tell you specifically. I'm sure there were, yeah. I mean otherwise I wouldn't have been bothered with not being able to.

Q Did you tell Captain Saxe – or Chief Saxe that there were other things you wanted to say, not questions, things you wanted to say?

A Again, I don't know. I would assume that that was the case; otherwise, we wouldn't have the discussion about saying anything else. If that was part of the conversation, it had to be because I wanted to say some other things. Again, I don't know specifically what it is I wanted to say. I know in general we had the conversation.

Q You don't have a recollection today, do you, of anything that Chief Saxe prevented you from saying?

A No.

Q Did you state at the predetermination hearing that you were familiar with the City of Madison Fire Department rules and regulations?

A I don't recall that, no. I have a general understanding of the rules.

Q At that time in June of '97 you were familiar with the [129] City of Madison Fire Department rules; right?

A Familiar in which way?

Q You knew what they were; you knew what they meant. If you had questions, you knew who to ask.

A If you mean I knew all of the rules and what they were and what they meant, no. Did I have a general idea of common sense rules? Yes. I understood the ones I had been charged with before. I had the knowledge that those existed, yes.

Q You have been charged with being disrespectful?

A Yes. I knew that was a rule. Couldn't think of the number where it was found, but I knew it was a rule.

Q You knew that there was a rule about bringing the department into disrepute; right?

A Yes.

Q Whether you agreed with it, you knew that was a rule; correct?

A It wasn't that I disagreed. I didn't understand it.

Q You understood it to be a rule, though; right?

A I understood that was a rule, yes. But what it meant, nobody understood that.

Q Did you know there was a rule that prohibited harassment in the fire department?

A Yes.

Q You knew that back in May and June of '97?

[130] A Yes.

Q Chief Saxe's memo marked as Exhibit 4 at page 2, the carryover paragraph says that you admitted you had never seen a copy of the investigation transcripts created by Assistant Chief Spohn and that you were unaware of any conclusions reached in the investigation. Do you see that?

A Yes.

Q Is that true? Is that what you would have admitted at the time of the predetermination hearing?

A Again, I believe – I'm not sure. I believe I did. Because I don't recall having any – seeing an investigation report, so, yes, it's true.

Q You don't have any reason to dispute this, do you?

A To be quite honest with you, anything from the fire department I don't trust. If I don't have a recording of it, I don't trust it.

Q You don't have any information, as we sit here today, that would dispute that you did not – that you admitted at this time that you had not seen a copy of the investigation transcripts?

A Say that one more time.

MR. DEAN: I'm sorry, I lost you. Which paragraph are you looking at specifically?

MR. MODL: Strike the question.

[131] Q Do you understand that it would be a violation of the law if Chief Amesqua was making decisions based on somebody's sexual orientation?

A Absolutely.

Q It violates the anti-discimination [sic] law; right?

A Yes.

Q And in your press release, Exhibit 1, are you suggesting that that's, in fact, what Chief Amesqua has done?

A That's a result of it, yes.

Q You're suggesting that in Exhibit 1 Chief Amesqua may have given discipline to Holtz based on her sexual orientation; right?

A Partly, yes.

Q And if that's the case, that would be a violation of state law; right?

A Yes.

Q And a violation of federal law; right?

A Yes.

Q Exhibit 1, your news release here, is this something that, in your opinion, could be embarrassing to the chief?

A Embarrassing to the chief?

Q Yes.

A Could be embarrassing to anybody. It could be.

[132] Q If you're accusing somebody of making decisions based on homosexuality, that can be embarrassing; right?

A I think any legal decision – any legal decision someone makes can be embarrassing, yes.

MR. DEAN: I'm sorry?

A Any legal decision.

Q In the fire department as a firefighter what kinds of things do you do besides fighting fires?

A At the station we mop floors, cook, clean, maintain equipment, clean equipment, inventory.

Q Do you respond to other emergencies besides fires?

A Yeah. Outside of the station we do emergency, medical, water rescues or recovery, hazardous materials response. We do high-tech rescues, trapped holes or that sort of thing, fire inspections, those kinds of things.

Q I assume all of those kind of external activities are the types of things which we talked about earlier where trust between firefighters is critical.

A Yeah. There are emergency situations where you're in a life or death situation. That trust is probably more significant than anywhere else.

Q You tend to work as a team when you do an emergency kind of rescue?

A Yes, always.

* * *

[134] a 24-hour period, and it's not just at night. They're the designated chief in charge that whole day.

Q Between the time Chief Amesqua began as fire chief for the City of Madison and the time you were suspended and ultimately discharged did you have any contact with Chief Amesqua?

A Probably. Maybe outside of the hearings, probably six, seven times. Less than 10 times, yes.

Q And those 10 times, what kind of circumstances would you have contact with Chief Amesqua?

A Different ones. I've had staff meetings with her, say, two or three times. Or basically you're bringing what they call the east side station together, No. 1, and we basically have our meeting with all those crews. That's happened a couple of times. We've been at two fire scenes where I had contact with her. Couple times her coming through the station on her way someplace else saying, "Hi. How are you doing," that sort of thing. And once – a couple times up at the administration office.

Q Anything about any of those, of the 10 contacts, that sticks out in your mind as there being any adversity between the two of you?

A No.

Q When Chief Amesqua would be at a fire scene these

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[136] No, I don't ever remember – that would be completely – man, that would be completely inappropriate. I remember that now.

Q There's a chain of command in the fire department; right?

A Yes.

Q And all firefighters are to respect the chain of command?

A Yes.

Q And respecting the chain of command, I would assume, would be not questioning authority, as a general rule; is that fair?

A You can question some of the authority after you have responded and did what they call you to do. You can question it afterwards. You can question, first of all, whether or not they have the authority to do it. You can question the wisdom of it. You can question anything you want, after you do it of course. There's no freedom of tolerance to disrespect or to question the authority by not doing something that someone in authority had asked you to do.

Q In that level of people following authority like that, I assume you'd agree that that's certainly stricter in the fire department than it is in the comptroller's office; correct?

* * *

[137] A I wouldn't, no.

Q You're a kind of military type organization with the levels of officers; right?

A Yes. In that sense, yeah.

Q And in the same sense as the military. You're to go through chains of command and comply with the directives from your superior; right?

A Well, again, that's the desired process they want you to follow. But unlike the military, it's not a hard, fast rule. For instance, if someone decides that there has been a violation, they've been harassed or discriminated against, and I want to file a complaint, the policy actually directs me to people above me or I can go outside and go to Affirmative Action and go directly to them. Or if I am under a certain officer and that officer in that instance is either the perpetrator or that officer doesn't respond the way the policy said he or she should respond, I can certainly then go to the chief officer – to the chief. So there's a policy where statements are followed; however, it's not a hard fast rule.

Q Sounds like the general rule is you should follow that policy.

A Right, exactly.

Q There may be circumstances that would justify

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[142] the exhibit before the commission did contain a fax saying Evangelical – Trinity of Angelical Church, and that's what it's referring to.

Q You didn't send this as the minister of the Evangelical Church. That wasn't your purpose in sending this to the press, was it?

A I'm a pastor of a church and firefighter, yes.

Q I understand you're a pastor.

A I sent it as Pastor Ronnie Greer and Ron Greer the firefighter. There's no separation between the two.

Q Is there anywhere in this document where you identify yourself other than the fax line, which we don't have, but anywhere in the document, the language of the press release, where you identify yourself as minister?

A No.

Q Is there anywhere in the document where you identify your views are religious views?

A No.

Q Is there some reason you believe that the press, to whom you sent this Exhibit 1, would have believed this to be sent as a pastor and expressing a religious view?

A In my experience, they assume everything I express is a religious view. I don't know. I can't say. I

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[146] press?

MR. DEAN: Objection. It's a multiple question.

Q I'll break that down for you. Have you received any criticisms from firefighters or any comments – strike that. Have you received any comments from any firefighters regarding your views on homosexuality –

A Yes.

Q – which were critical?

A Yes, I have.

Q And what comments have you received?

A Some positive; some negative. Mostly positive. Mostly in agreement. But there have been some who are

critical of my views, yes, but they have been over the years.

Q What negative comments have you received from firefighters since the time you sent Exhibit 1?

A There are some firefighters who didn't like the attention the fire department got because of the attention they got. Whatever that may be.

Q And who was that?

A I don't recall. I've heard the comment a couple times. It's not a normal thing. I have had mostly comments about people who support it.

Q And the negative comments you received from people who

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[149] Chief Amesqua may have acted illegally in her discipline; correct? And that's what we've talked about.

A That's what you characterize, and I'm questioning whether or not that is the case. And I'm saying that there is enough evidence for someone to question whether or not it did or didn't occur.

Q If somebody believes that the chief acted illegally as you suggest may be the case here, is that something that could discredit her as a chief?

A I would think so, yes.

Q You would think so?

A Yes.

Q Is that something that could create problems for her in meting out discipline to other people? Is it a problem for her meting that discipline?

A No. She has sole authority to mete her discipline. There's nobody there that can question what she does or doesn't do. The only one that can question is the Police and Fire Commission and the mayor's office.

Q You're suggesting that she's giving discipline out on an illegal basis of sexual orientation?

MR. DEAN: Objection. That's been asked and answered.

Q With that, I don't want to keep asking about that [150] assumption. Don't you believe that that can affect other discipline that the chief gives out that other people will question her?

A If she is illegally meting out discipline unfairly, then, of course, that will affect the attitudes of other folks about her meting her discipline. Whether she would do it fairly or not – I mean that's if she does it illegal or unfairly. Yes, other people will have difficulty accepting her decisions later.

Q There's been a reference to you picketing outside the swearing-in ceremony. What's that about?

A That was inside. I wasn't outside. I basically went to the Police and Fire Commission hearing, and I stood in the back after about a yard in and held up a sign.

Q This is at the swearing-in ceremony of Chief Amesqua?

A Yes.

Q And you held up a sign?

A Uh-huh.

Q Yes?

A Yes.

Q What did the sign say?

A It said, "When does wrong become right?" One side says, "Injustice is just wrong. Not Affirmative Action," and on the back it says, "When does wrong become right?"

[151] Q I didn't hear the – "Injustice is just wrong. Not Affirmative Action"?

A Yes.

Q What does that mean?

A Injustice is just wrong. It's not Affirmative Action. If we do something unjustly and call it Affirmative Action, it doesn't make it Affirmative Action. It makes it still unjust. It's wrong.

Q You're communicating that you believe the hiring was an Affirmative Action, hiring of the chief?

A Yes. The commission hired her as an Affirmative Action hire, but it was an unjust hiring.

Q An Affirmative Action hire would have been based upon her gender?

A Gender or some identification that hired her by someone with the protective groups.

Q And the protective groups, that would have been sexual orientation; right?

A Yes.

Q And that was one of the meanings of your Affirmative Action sign?

A Say that one more time.

Q Sure. One of the meanings you're communicating with the Affirmative Action sign was that the chief was hired based on Affirmative Action reasons including

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[168] They were passing them out.

Q Are the union meetings on a certain day of the week?

A Yes.

Q What day of the week would that have been?

A I'm not sure. Well, put this way. They are monthly, and I'm not sure when that is. Second Tuesday or first Wednesday or something like that. I don't know.

Q How would we find that out, Mr. Greer, when –

A I can contact the union office. I'm sure they'll have a record of the meeting. Probably they'll tell you what – given the date – what union meeting was after that date or closest to it.

Q As you sit here today, did you have any idea how long you had Exhibit 2 in your possession before you prepared Exhibit 1?

A No.

Q Don't know if it was two days or two weeks?

A No.

Q We talked about following orders being important in these kind of paramilitary organizations; right?

A We talked about respecting authority, yes.

Q At a fire scene or an emergency scene I assume following authority is probably even more important; is that fair?

A Much more important, yes.

* * *

[181] Q Yes.

A I don't know.

Q You're not aware of any?

A No, not right offhand.

Q You say that in this lawsuit you were treated more harshly than other people, other firefighters in the discipline you received; is that right?

A Yes.

Q You told me about Chief Holtz – I assume she's one of the people you consider.

A Yes.

Q Anybody else?

A Not right offhand, no.

Q I'm going to show you Exhibit 8. You don't need to read through the whole thing, Mr. Greer, but is that the offer of proof that you submitted to the Police and Fire Commission in the course of the dismissal proceedings?

A I would assume so, yes. Looks like it. And my signature, yes.

Q I think we're almost done here. What did the bumper sticker on Chief Amesqua's vehicle say?

A Didn't say anything. It's a gay liberation flag.

Q It's a flag?

A Yes. Well, it's a sticker that symbolizes a flag.

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[183] property, including something like that. They have since been removed from other firefighters' vehicles.

Q What's been removed from other firefighters' vehicles?

A Political bumpers – or stickers or bumper stickers or symbols that symbolize sort of political or political preference or whatever.

Q Was that a written rule?

A As I understand it, yes.

Q Have you ever seen it?

A Yes, I saw it. I was shown something that was a copy of a rule or policy. At least I was told that's what it was.

Q It is a rule that's in, for example, the fire department work rules?

A Again, it was on another sheet of paper, quotations on it, and I would assume it's part of the fire department rule or fire department policy.

Q You have Exhibit 6 in front of you. That would be the statement of charges; correct?

A Yes.

Q Attached to that, the last two pages, the backside of one page and then the last page, that's a newspaper article; correct?

A Copies of it, yes.

Q This was an article that ran on Thursday, May 1, 1997?

[184] A Yes.

Q Is this the article that was based upon the news release, Exhibit 1, to this proceeding?

A Yes. It's the same thing, yes.

Q And it quotes from your news release; correct?

A Where exactly? Yes. Some quotes, yeah. Yes, there's one there.

Q The continuation has "Could it be that their radical agenda has come to play." Do you see that?

A Yes.

Q That's from your letter; correct, your press release?

A Yes. Let me look at it first to make sure.

(Witness reviews document)

A Yes.

MR. MODL: That's it. Thank you.

(Adjourning at 1:16 P.M.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RONNIE B. GREER,

Plaintiff,

v. Case No. 98 C 560 C

DEBRA H. AMESQUA, ALAN SEEGER, MARGARET MacMURRAY, BYRON BISHOP, LYNN HOBBIE, MARIO MENDOZA, THE CITY OF MADISON FIRE DEPARTMENT, THE CITY OF MADISON, THE CITY OF MADISON POLICE & FIRE COMMISSION, and ABC INSURANCE COMPANY,

Defendants.

AFFIDAVIT OF CITY OF MADISON FIRE CHIEF DEBRA H. AMESQUA IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

STATE OF WISCONSIN)
) ss.
County of Dane)

Debra H. Amesqua, being first duly sworn on oath deposes and states as follows:

1. I am an adult resident of the State of Wisconsin.

2. I make this Affidavit on the basis of my personal knowledge of the facts set forth herein.

3. At all times relevant hereto, I was the Fire Chief for the City of Madison.

4. I am familiar with disciplinary actions taken by the City of Madison Board of Police and Fire Commissioners ("PFC") against former firefighter Ronnie Greer.

5. Between 1987 and the present, City of Madison fire chiefs have filed with the PFC charges on five (5) separate occasions against Ronnie Greer, alleging violations of various City of Madison policies and City of Madison Fire Department policies and/or rules.

6. Attached hereto as *Exhibit 1* is a true and correct copy of the City of Madison Fire Department Work Rules.

7. In December 1996, I filed with the PFC a statement of charges against firefighter Ronnie Greer, alleging violation of rules of the Madison Fire Department and violation of the City's administrative procedure memorandum which prohibits harassment in the workplace. The conduct giving rise to the December 1996 charges included distribution on Department property of a pamphlet entitled, "Homosexuality: The Truth."

8. The PFC sustained the December 1996 charges and suspended firefighter Greer for three (3) months without pay. The PFC's decision included a two (2) month suspension and a one (1) month suspension, both without pay. These suspensions ran concurrently.

9. Attached hereto as *Exhibit 5* is a true and correct copy of the PFC's June 25, 1997 Decision and Order.

10. In October 1996, I learned about an incident which occurred during a training exercise at the Firefighter Academy involving Recruit Cato and Division Chief Holtz.

11. This incident involved physical contact between Division Chief Holtz and Recuit [sic] Cato.

12. I assigned Assistant Chief Spohn to investigate this matter.

13. Spohn conducted an investigation and provided a report and recommendations to me.

14. I reviewed Assistant Chief Spohn's report and the file in this matter.

15. It was my conclusion, based upon the investigation, that Division Chief Holtz' conduct was not unreasonable under the circumstances. I did extend Division Chief Holtz' probation six (6) months and required that she attend leadership school as a result of the October 1996 incident.

16. On or about May 1, 1997, I became aware of Greer's "news release" and a newspaper article which appeared in the *Capital Times* newspaper which was based upon the "news release." Attached hereto as *Exhibit 4* is a true and correct copy of the newspaper article, which is attached to the July 28, 1997 Statement of Charges.

17. I assigned Assistant Chief Saxe to investigate Greer's conduct in providing the offensive "news release" to the press.

18. Assistant Chief Saxe completed his investigation on or about June 5, 1997, and prepared a report and recommendation which he forwarded to me. Attached hereto as *Exhibit 3* is a true and correct copy of the June 5, 1997 report from Saxe to Amesqua.

19. Assistant Chief Saxe recommended that the employment of Greer be terminated.

20. I reviewed Chief Saxe's June 5, 1997 report and the file in this matter.

21. In correspondence dated June 10, 1997, from Amesqua to Greer, I informed Greer that based upon Greer's conduct regarding the content and distribution of the "news release" to the press, I had concluded that Greer's employment with the Department should be terminated. Attached hereto as *Exhibit 2* is a true and correct copy of the June 10, 1997 correspondence.

22. I provided to Greer the opportunity to resign, which Greer declined to do.

23. On or about July 28, 1997, I filed a statement of charges against firefighter Greer with the PFC for Greer's violation of Fire Department policies and rules and for violation of the City's anti-harassment administrative procedure memorandum 3-5.

24. The basis of the July 1997 charges included firefighter Greer's distribution of a "news release" entitled, "Homosexual Chief Rewards Homosexual Chief for Assault?" and the potential disruptive effect of such distribution and Greer's prior disciplinary record.

25. I received complaints from City of Madison residents, as well as firefighters, regarding Greer's verbal attacks on homosexuals.

26. In bringing charges to the PFC recommending termination of Greer's employment as a firefighter, I was seriously concerned with the disruptive effect of Greer's inappropriate comments on other employees, on management and on the public's confidence of the City of Madison to provide firefighting services to all citizens regardless of their sexual orientation.

27. In bringing charges seeking Greer's dismissal, I was concerned with Greer's inability to maintain a civil relationship with his supervisors.

28. Discipline and employee comradery are essential for the safe and efficient operation of the Fire Department and Greer's comments as reflected in the "news release" entitled "Homosexual Chief Rewards Homosexual Chief for Assault?" has the serious potential to adversely affect the efficient operation of the City of Madison Fire Department.

29. By Decision and Order dated July 31, 1998, the PFC sustained the charges and ordered that Greer be terminated from employment.

30. I have never publicly acknowledged my sexual orientation.

/s/ Debra H. Amesqua
Debra H. Amesqua

Subscribed and sworn to before me
this 16th day of April, 1999.

/s/ Irmgard J. Metz
Notary Public, State of Wisconsin
My commission expires: June 20, 1999.

FROM THE OFFICE OF THE MAYOR
ADMINISTRATIVE PROCEDURE
MEMORANDUM NO. 3-5

SUBJECT: HARASSMENT ON THE BASIS OF RACE, SEX, RELIGION, COLOR, AGE, DISABILITY, NATIONAL ORIGIN OR SEXUAL ORIENTATION

Policy: The City's Affirmative Action Plan commits all departments of City government to ensuring a harassment-free work environment for all persons, regardless of their race, sex, religion, color, age, disability, national origin or sexual orientation. Our diverse City employee base must be supported in a harassment-free work environment.

The constitutions of the United States and the State of Wisconsin protect the right of all citizens, including public employees, to speak freely on matters of public concern. We all recognize and value those rights. Citizens are not deprived of fundamental rights by virtue of working for the government.[1]

The constitutionality of the policy set forth in this Administrative Procedure Memorandum was upheld by the Wisconsin Court of Appeals in *James L. Gilbert v. Board of Police and Fire Commissioners of the City of Madison and Edward D. Durkin,* Case No. 84-769. Court of Appeals, Dist. IV, January 14, 1986. The Court's opinion stated:

> " . . . The free speech rights of public employees are not absolute. *Pickering v. Board of Education,* 391 U.S. 563, 568 (1968) We must balance the interests of the public employee, as a citizen, in commenting upon matters of public concern and

the interests of the government employer in promoting the efficiency of the public services it performs through its employees . . . " (slip op. p.8).

Rule: Any employee who shall engage in harassment[2] on the basis of race, sex,[3] religion, color, age, disability, national origin or sexual orientation; who permits employees under his/her supervision to engage in such harassment; or who retaliates or permits retaliation against an employee who reports such harassment is guilty of misconduct and shall be subject to remedial action, which may include the imposition of discipline up to and including discharge.

Employees are not permitted to retaliate against witnesses or persons who participate in the investigation of harassment. Such retaliation is also misconduct and may be subject to discipline, up to and including discharge.

Employee Complaints: All employees are urged to report instances of harassment to their department or division director. City employees may also make such complaints directly to the City Affirmative Action Director.

Obligations of Every Supervisor:

1. Supervisors Shall Respond to Employee Complaints

   A supervisor is obligated to notify the department head or division head at any time that an employee complains of harassment or of conduct which could constitute harassment.

2. Supervisors Shall Take Responsibility for Assuring a Harassment-Free Work Environment

Supervisors should demonstrate by their own conduct that they are committed to providing a work environment free of harassment. Supervisors shall, at all times, refrain from harassment and retaliation and should counsel and instruct subordinates in defining and preventing harassment.

3. Supervisors Shall Respond to Harassment by Persons Who Are Not City Employees

When employees report harassment by citizens, supervisors shall use all appropriate means to stop the harassing conduct. The supervisor shall promptly inform the department head or division head about the report and what was done to resolve it.

Obligations of Department and Division Heads: It is the duty of the City department and division directors, as well as others charged with the supervision of City employees, to take affirmative steps to ensure a harassment-free environment for all City employees. While such affirmative management will take many forms, the following steps are required of all department and division directors.

1. Accept and announce responsibility for maintaining a harassment-free work environment in his/her department, division or work unit.
2. Circulate this memorandum to all employees, at least once each year.
3. Cooperate with the Affirmative Action Department and the Human Resources Department in the development and implementation of necessary orientation, training, and education programs aimed at defining and preventing harassment.
4. Announce that all reported incidents of harassment will be fully investigated and that proven violations

will be met with appropriate sanctions, including, if indicated, disciplinary actions.

5. Require in writing that supervisors report to department/division directors all instances of reported harassment. The department/division director shall notify the City Affirmative Action Director immediately of the existence of reported instances of harassment.

6. Department/division heads are responsible for complaint investigation and resolution, including discipline, if indicated. They shall cooperate with the Affirmative Action Department in the conduct of investigations, but department/division heads bear final responsibility for disciplinary decisions.

7. The department or division head shall consult with the Affirmative Action Director to advise and assist in the investigation. The City Attorney, Labor Relations Manager, Human Resources Director and any other appropriate City official also may be called upon by the department head and the Affirmative Action Director to assist in the investigation.

Obligations of Affirmative Action Director: Whenever the Affirmative Action Director receives notification that an employee has complained of workplace harassment, or of conduct which could amount to harassment, the Affirmative Action Director shall inform the employee's department/division head.

The Affirmative Action Director shall develop and carry out training and education programs for all employees, including specialized training for supervisors, to help employees define and prevent workplace harassment.

The Affirmative Action Director shall assist the department/division head as necessary in investigating the complaint.

Confidentiality: All employees shall cooperate in investigating complaints of harassment. The nature of harassment violations, particularly those involving sexual harassment, requires a high degree of confidentiality and flexibility in approaches to investigation and resolution.

All employees shall keep their communications in such an investigation confidential and shall disclose them only to City officials and employees who need the disclosure in order to perform their duties.

Required Training: Any new or temporary Supervisor, Department, Division or Unit Head shall receive training regarding the application of this policy and regarding their responsibilities under this policy. The appointing authority shall notify the Affirmative Action Director and make arrangements for such training at the time of hire or assignment to supervisory responsibilities. Said training shall be provided by the Affirmative Action Director or her/his designee. This training shall be provided within 30 days of the effective date of the hire, promotion, transfer or temporary assignment to supervisory responsibilities. The appointing authority shall also ensure that, at the earliest date that training is available, arrangements are made for new or temporary supervisors to attend the City of Madison training module on How to Conduct the Employee Misconduct Investigative Interview.

Formal Complaints:

1. When harassment is reported, the Affirmative Action Director, or her/his designee, shall inform the Complainant of all appropriate agencies where formal complaints may be filed and inform the person of any time limit requirements to file a formal complaint with those agencies.

2. In the event that the employee files a grievance, or a formal complaint or lawsuit with an outside agency, the Affirmative Action Department, City Attorney's Office, Human Resources Department, Labor Relations Unit and the department involved will work cooperatively to conclude the investigation.

/s/ Paul R. Soglin
Paul R. Soglin
Mayor

APM No. 3-5
August 30, 1996